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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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PETITION OF MCDONALD=S USA, LLC : Case No. S-786-B
: OZAH No. 11-43
:
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A hearing in the above-entitled matter was held on
January 23, 2012, commencing at 9:38 a.m., at the Council
Office Building, Davidson Memorial Hearing Room, 2nd Floor,
100 Maryland Avenue, Rockville, Maryland 20850 before:
Lynn A. Robeson, Hearing Examiner

A P P E A R A N C E S

Page

ON BEHALF OF THE PETITIONER:

John Eidenberger 8, 66
6903 Rockledge Drive, Suite 1100
Bethesda, Maryland 20877

Richard Hurney 17, 88
20410 Century Boulevard, Suite 230
Germantown, Maryland

Mike Workosky 49. 101
1420 Springhill Road, Suite 600
McLean, Virginia 22101

ON BEHALF OF THE OPPOSITION

Richard Kauffunger 71
2309 East Gate Drive
Silver Spring, Maryland

P R O C E E D I N G S

1
2 EXAMINER: We=re on the record. Good morning.
3 This is a public hearing in the matter of McDonald=s USA,
4 LLC case S-786-B, OZAH case 11-43, an application to modify
5 an existing special exception for a drive-in restaurant at
6 2207 Bel Pre Road, Silver Spring, Maryland on land in the C1
7 zone. The property=s legal description is Lot 3, Tremoulis
8 property, Layhill. This hearing is conducted on behalf of
9 the Board of Appeals. My name is Lynn Robeson. I=m the
10 hearing examiner, and I=m going to take testimony and
11 evidence today and write a report and recommendation to the
12 Board who makes the final decision in the case. I see the
13 applicant here. Is there anyone from the audience who is
14 going to testify in this case? Yes, sir?

15 MR. KAUFFUNGER: My name is Richard Kauffunger.
16 I=ve signed it.

17 EXAMINER: Okay. Why don=t you come up here.

18 MR. KAUFFUNGER: Okay.

19 EXAMINER: You=re welcome to come up here and ask
20 questions.

21 MR. KAUFFUNGER: Thank you to the court.

22 EXAMINER: And can you identify yourself for the
23 record, please?

24 MR. RUHLEN: Yes. Sure. My name is Chris Ruhlen.
25 I=m with the law firm of Lerch, Early, and Brewer.

1 EXAMINER: Okay. Is the affidavit of posting
2 already submitted in the file?

3 MR. RUHLEN: Yes. Actually, we have it right here
4 to submit.

5 EXAMINER: Okay. I'm going to take that as
6 Exhibit 28 if you want to bring it forward. Thank you. And
7 just do this. All right. Are there any preliminary
8 matters? Mr. Ruhlen?

9 MR. RUHLEN: I think we're ready to begin our --

10 EXAMINER: Okay. Any opening statements?

11 MR. RUHLEN: Yes. As I said, my name is Chris
12 Ruhlen. I'm with the law firm of Lerch, Early, and Brewer.
13 Our firm represents the applicant in this case, McDonald=s
14 USA, LLC. With me today are John Eidenberger who is the
15 area construction manager for the Baltimore/Washington
16 region of McDonald=s. He=s here on behalf of the applicant.
17 Dick Hurney of Huron Consulting, the civil engineer for this
18 project and Mike Workosky of Wells and Associates, our
19 traffic consultant.

20 EXAMINER: Okay.

21 MR. RUHLEN: We're pleased to have this
22 opportunity to present our application for modifications to
23 the existing drive through at 2207 Bel Pre Road in Aspen
24 Hill which is an approved special exception use, as well as
25 to review our request for a parking waiver in connection

1 with these modifications. This project is fairly straight
2 forward and minor in nature. We're not proposing any
3 changes in terms of hours or operation or number of
4 employees for the restaurant. Rather, the applicant seeks
5 to rebuild and modernize a facility that's been in
6 continuous operation on the property since at least 1979
7 when the county first approved a special exception to expand
8 the dining room of a then existing restaurant. At least
9 four other amendments to the special exception have been
10 approved since that initial approval in 1979. However, ours
11 is the first in more than 20 years to propose physical
12 changes to the building and site. These physical
13 renovations are important because they will allow more
14 modern, efficient restaurant to be constructed at a location
15 that has proven over time to be very successful. You will
16 see from our presentation that, with the proposed
17 renovations, the special exception will continue to comply
18 with the general and specific requirements of the zoning
19 ordinance for a drive through restaurant use as well as with
20 the recommendations of the 1994 approved and adopted Aspen
21 Hill master plan. We understand that a question regarding
22 zoning merger has been raised by the hearing examiner with
23 regard to the proposed location of a trash enclosure on the
24 adjacent Plaza del Mercado property. As described by the
25 Court of Appeals in Reams v. Montgomery County, we

1 understand zoning merger issues to arise where one of two
2 lots that are held in common ownership is used in service to
3 the other lot solely to meet zoning requirements. Stated
4 differently, zoning merger occurs when a structure placed on
5 one lot would be nonconforming but for consideration of an
6 adjacent lot under the same ownership for purposes of
7 assessing compliance with zoning requirements. As the
8 evidence will demonstrate, there are no facts or
9 circumstances which would support the application of the
10 doctrine of zoning merger in this instance. Before we begin
11 our presentation, I would like to note that the applicant
12 was pleased with the planning board=s recommendation of
13 approval and agrees with the boards findings and
14 conclusions. We would also note that in terms of process,
15 this project will ultimately require the planning board to
16 approve a site plan as a C1 zone will require a site plan
17 even if the special exception is approved, ultimately, by
18 the Board of Appeals. We=ve completed the affidavit of
19 posting which we have submit to the record. With regard to
20 our testimony, we will first call Mr. Eidenberger who, as
21 the spokesperson for the applicant, will testify as to the
22 general objectives for the renovation project and the
23 operational aspects of the special exception. We will then
24 call Mr. Hurney who will testify as an expert in land
25 planning and civil engineering. Mr. Hurney will focus on

1 matters related to the character and features of the
2 property and surrounding area, project design consideration,
3 site planning and compliance with the zoning ordinance
4 standards and requirements as well as compliance with storm
5 water management, forest conservation, and other applicable
6 regulations. And finally, Mr. Workosky will testify as an
7 expert in transportation planning to discuss the
8 characteristics of the roadway surrounding the property and
9 the impacts of the renovation project on roadway capacity.
10 Mr. Workosky will also testify as to vehicle circulation and
11 his findings as to the adequacy, safety, and efficiency of
12 the proposed plans for handling vehicle circulation. So,
13 with that, we can proceed. We=d like to call our first
14 witness.

15 EXAMINER: Okay. Just a second. Is it Kaufflear?

16 MR. KAUFFUNGER: No.

17 EXAMINER: Kauffunger.

18 MR. KAUFFUNGER: K-A-U-F-F-U-N-G-E-R.

19 EXAMINER: Okay.

20 MR. KAUFFUNGER: If that helped you?

21 EXAMINER: That wasn=t what I was expecting but
22 I=ll accept it. Do you have any opening statement you=d
23 like to make or --

24 MR. KAUFFUNGER: Yes. I=m appearing here today as
25 an individual but also at the request of the president of

1 the Layhill Village Civic Association. I am a party of
2 record in this case because I was deeply involved at the
3 time that the McDonald=s added the drive through windows and
4 there were a number of issues that were raised at that time
5 that some of the changes are vast improvements and answer
6 the problems but there are other problems that directly
7 impact concerns about parking and the number of parking
8 spaces available.

9 EXAMINER: Okay. All right. Now, Mr. Ruhlen,
10 would you like to call your first witness?

11 MR. RUHLEN: Yes. I=d like to call Mr.
12 Eidenberger.

13 EXAMINER: Okay. Mr. Eidenberger, please raise
14 your right hand. Do you solemnly affirm under penalties of
15 perjury that the statements you=re about to make are the
16 truth, the whole truth, and nothing but the truth?

17 MR. EIDENBERGER: Yes.

18 EXAMINER: All right. Please state your name and
19 address for the record.

20 MR. EIDENBERGER: Yes. My name is John
21 Eidenberger, and I=m an area construction manager for the
22 McDonald=s Corporation, and my address is 6903 Rockledge
23 Drive, Suite 1100, Bethesda, Maryland 20817.

24 EXAMINER: Thank you.

25 MR. RUHLEN: Mr. Eidenberger, how long have you

1 been employed by McDonald=s, and what are the
2 responsibilities of your position?

3 MR. EIDENBERGER: Yes. I=ve been employed by
4 McDonald=s for 27 years, and my responsibilities are to
5 permit and construct new and remodel McDonald=s restaurants.

6 MR. RUHLEN: Okay. Are you familiar with special
7 exceptions in case S-786-B which is the subject of today=s
8 hearing?

9 MR. EIDENBERGER: Yes. I am.

10 MR. RUHLEN: Would you please describe the general
11 background and context of this special exception
12 application?

13 MR. EIDENBERGER: Yes. McDonald=s leases this
14 property, and this is a recorded lot that is owned by
15 Federal Realty, and it=s within a larger shopping center
16 that is also owned by Federal Realty. The existing
17 restaurant, the existing McDonald=s restaurant, on the
18 property is outdated, and since the restaurant=s original
19 construction, McDonald=s has updated various aspects of our
20 models for our existing restaurants and that would include a
21 new emphasis on our casual dining environment, and a more
22 variant visual architectural look that=s more appealing with
23 this specific exterior look and that would include a
24 flattened roof line, more earth tone colors and indirect
25 lighting to really highlight the building architecture. We

1 are also incorporating a lot of latest efficiencies into the
2 building and that would include our drive through auto
3 stations and how the whole drive through functions for the
4 restaurant and we believe that the special exception
5 modifications will allow these changes to be made.

6 EXAMINER: No more red and golden arches. No more
7 red sign with the golden arches?

8 MR. EIDENBERGER: So, our signs are still on the
9 building but the red and white branded look is an outdated
10 mode, and we're trying to make it more relevant for today --

11 EXAMINER: Yes.

12 MR. EIDENBERGER: -- you know, our customers in
13 our communities. So --

14 MR. RUHLEN: Have you made a personal inspection
15 of the special exception site and are you familiar with the
16 area surrounding the property?

17 MR. EIDENBERGER: Yes. I've made an inspection
18 several times of this site. This site is located, well,
19 we're now a parcel pad located at Plaza del Mercado Shopping
20 Center, and this property is currently developed as a
21 McDonald=s restaurant with a drive through.

22 MR. RUHLEN: Please describe, if you will, the
23 current restaurant on the property and the general scope and
24 objectives of the proposed renovations.

25 MR. EIDENBERGER: The current restaurant is an

1 existing McDonald=s restaurant with a drive through. The
2 proposed restaurants will still be a McDonald=s restaurant
3 with a drive through. It=s going to provide a new modern
4 restaurant look as shown on the exhibits, and there=s an
5 opportunity with this rebuild to remove -- the existing
6 building has a cellar in it. The new building, it=s -- and
7 that=s a unique situation with this restaurant. The cellar
8 is actually a special condition for this restaurant. With
9 the rebuild, we are actually going to remove that cellar,
10 and we=re going to move it up onto the first floor area. It
11 will just be a slab on grade versus a building with a
12 basement.

13 EXAMINER: Okay. If you can -- I=m just going to
14 stop you one second.

15 MR. EIDENBERGER: Sure.

16 EXAMINER: If we=re going to refer to these
17 exhibits, can you mark -- I believe -- I don=t know if
18 they=re exact duplicates of what=s already in the record.

19 MR. RUHLEN: I believe that elevations are and the
20 photos, I believe, were submitted. Dick, is this the latest
21 site plan?

22 MR. KAUFFUNGER: Yes. That=s the latest one.

23 EXAMINER: That=s a rendered version?

24 MR. KAUFFUNGER: That=s a rendered version.

25 MR. RUHLEN: And is that the --

1 MR. KAUFFUNGER: Yeah. That=s fine. That=s
2 admitted. So --

3 EXAMINER: Okay.

4 MR. RUHLEN: Okay. So, we=d like to mark that.

5 EXAMINER: Let=s mark those.

6 MR. RUHLEN: Okay.

7 EXAMINER: 29 will be the rendered site plan.

8 MR. RUHLEN: Shall we mark the photos as well?

9 EXAMINER: Yes. Please.

10 MR. RUHLEN: I think so.

11 EXAMINER: And can you describe what the photos
12 are just very briefly, Mr. Eidenberger and then we=ll give
13 it a name.

14 MR. EIDENBERGER: Absolutely.

15 EXAMINER: Are those existing conditions?

16 MR. RUHLEN: Yes.

17 MR. EIDENBERGER: Yes. They are.

18 EXAMINER: Photos of existing conditions will be
19 Exhibit 30. And are you sure that --

20 MR. EIDENBERGER: I can take them off and submit
21 them.

22 EXAMINER: Why don=t you do this. Why don=t we
23 mark those. I think it is in the record. Yes. But, why
24 don=t you mark it as Exhibit 17I duplicate.

25 MR. EIDENBERGER: Okay.

1 EXAMINER: Because once in a while we have people
2 who on write on these. So --

3 MR. EIDENBERGER: Sure.

4 MR. RUHLEN: 17I duplicate, and the photos were
5 Exhibit 30. Is that correct?

6 EXAMINER: Yes.

7 MR. RUHLEN: Okay.

8 EXAMINER: And duplicate of Exhibit 17I. I=m just
9 going to give it a separate number in case someone does
10 write on it.

11 MR. EIDENBERGER: We can take them off.

12 MR. RUHLEN: Oh. Yeah. Actually, we can remove
13 these from the boards at the end of the hearing.

14 EXAMINER: You don=t have to until the end.

15 MR. EIDENBERGER: Okay.

16 EXAMINER: Until the case is --

17 MR. RUHLEN: So, why don=t we go ahead and we=ll
18 mark it for now so we can refer to it.

19 MR. HURNEY: Which one?

20 MR. RUHLEN: The --

21 EXAMINER: Why don=t you do this? In the, yeah.
22 Just mark the whole board.

23 MR. RUHLEN: Okay.

24 EXAMINER: We=ll keep the whole board through the
25 Board of Appeals hearing.

1 MR. RUHLEN: Okay.

2 EXAMINER: It would be Exhibit 30, photos of
3 existing conditions. All you have to write on it is Exhibit
4 30.

5 MR. RUHLEN: Okay.

6 EXAMINER: Thank you.

7 MR. EIDENBERGER: There=s a stacking exhibit on
8 the back, and I have existing conditions.

9 MR. RUHLEN: Why don=t we do those when we get to
10 that portion of the testimony.

11 EXAMINER: Yeah. Mr. Kauffunger, any objections?

12 MR. KAUFFUNGER: No.

13 EXAMINER: Okay. They=re admitted. I=m sorry.
14 Mr. Eidenberger, do you want to continue?

15 MR. EIDENBERGER: Yes. So, I left off describing
16 the building and how we=re removing the cellar from the
17 existing building and putting it up on the first floor of
18 the building, and I=ll continue on from there. Another
19 aspect of the renovation, we will be upgrading our drive
20 through part of the development with an additional order
21 station. This will create a more effective way to channel
22 and control vehicle movements through our site, and our
23 traffic engineer will address that further in his testimony.
24 We=ll also be providing a front drive aisle in front of
25 McDonald=s restaurant on site with additional landscaping,

1 and this front drive aisle will also intend to address bad
2 circulation issues existing versus proposed, and there will
3 be a new dedicated trash corral separated from the building.
4 The existing trash corral is attached to the building. The
5 new trash corral will be separated to, again, help with the
6 circulation throughout the site with proposed development.

7 MR. RUHLEN: Are there any changes in operation
8 sought in connection with this special exception?

9 MR. EIDENBERGER: No. There=s not. The existing
10 restaurant runs 24 hours a day, seven days a week. It
11 receives three deliveries -- delivers three times per week
12 at one delivery per truck. The proposed will remain the
13 same. The existing restaurant and proposed restaurant will
14 both continue to employ 14 employees during the morning peak
15 hours, 16 during the lunch peak hours, 14 during the evening
16 peak hours, and three during the overnight shifts, and there
17 will always be a manager on site 24 hours a day, seven days
18 a week.

19 MR. RUHLEN: Okay. Has there been any community
20 outreach undertaken in connection with this special
21 exception application?

22 MR. EIDENBERGER: Yes. There has. We=ve had two
23 meetings in neighborhood outreach. We had one meeting for
24 the special exception in the early planning processes, and
25 that happened on May 31, 2011. We had another meeting for

1 the site plan=s pre-submission and that happened on October
2 27, 2011.

3 MR. RUHLEN: Okay. Is there anything else that
4 you would like to add?

5 MR. EIDENBERGER: Yeah. I=d like to, excuse me,
6 my voice. I=d like to just mention that McDonald=s has
7 become a very mature company, and the proposed rebuild that
8 we=re proposing for this site is representative of what
9 we=re doing system wide for all of our restaurants. We
10 realize that our outdated restaurants need to be updated to
11 service our customers, and we want to make sure that our
12 restaurants stay fresh and relevant for our customers in the
13 neighborhood and communities where they exist.

14 EXAMINER: Okay.

15 MR. RUHLEN: Great. Thank you. We have no
16 further questions.

17 EXAMINER: Okay. Just for the record, I have
18 driven -- I didn=t make a site visit specific to this
19 application but just for the record, I have been to that
20 shopping center and seen the McDonald=s and disclose that my
21 overall impression of the traffic was that it was a free-
22 for-all. So, I do have to disclose that I have been there
23 and those were my general observations at the time. So, it
24 sounds like you are trying to improve that situation.

25 MR. EIDENBERGER: We absolutely are with the

1 rebuild.

2 EXAMINER: Right.

3 MR. EIDENBERGER: It=s to make the building more
4 relevant and fresh. It=s the building and the site
5 improvements. We=re improving the building, interior and
6 exterior, for a better interior experience for our
7 customers. We=re also improving the site with a more
8 defined drive through flow that=s separated from the
9 wonderful free-for-all you discussed. So --

10 EXAMINER: Right. And when you say improving,
11 your application is tearing the old one down and putting a
12 new one in place. Correct?

13 MR. EIDENBERGER: Tearing it down 100 percent
14 and --

15 EXAMINER: Okay.

16 MR. EIDENBERGER: -- coming back with a brand new
17 facility.

18 EXAMINER: All right. Thank you.

19 MR. RUHLEN: Okay. We=d like to call Mr. Hurney
20 if we=re ready.

21 EXAMINER: Mr. Hurney, do you have that balanced
22 there?

23 MR. HURNEY: That=s all right. I --

24 EXAMINER: I need your right hand. Please raise
25 your right hand. Do you solemnly affirm under penalties of

1 perjury that the statements you=re about to make are the
2 truth, the whole truth, and nothing but the truth?

3 MR. HURNEY: I do.

4 EXAMINER: Please state your name and business
5 address for the record?

6 MR. HURNEY: Uh-huh. My name is Richard Hurney.
7 I am the president of Huron Consulting at 20410 Century
8 Boulevard, Suite 230, Germantown, Maryland.

9 EXAMINER: And can you spell Hurney, please?

10 MR. HURNEY: H-U-R-N-E-Y.

11 EXAMINER: Okay. That one I expected. Okay. Go
12 ahead.

13 MR. RUHLEN: Okay. Mr. Hurney, how long have you
14 been employed as a civil engineer?

15 MR. HURNEY: Thirty-eight years.

16 MR. RUHLEN: Please describe for us your
17 professional educational background and any professional
18 designations or accreditations that you=ve received.

19 MR. HURNEY: Yes. I have a Bachelor=s in civil
20 engineering. I=ve been practicing engineering for 38 years.
21 I=m a registered engineer in six states including Maryland,
22 D.C., Virginia, Maryland, Pennsylvania, West Virginia, North
23 Carolina. I=ve been the president of Huron Consulting for
24 over seven years. I=ve worked in Montgomery County for the
25 38 years.

1 MR. RUHLEN: Okay. I believe you just answered
2 this but are you licensed in Maryland as a professional
3 engineer?

4 MR. HURNEY: Yes. I am.

5 MR. RUHLEN: Who is your current employer and
6 what=s your employer=s full business address?

7 MR. HURNEY: I=m employed by Huron Consulting,
8 20410 Century Boulevard, Germantown, Maryland.

9 MR. RUHLEN: What are the responsibilities of your
10 current position with Huron?

11 MR. HURNEY: As president, I=m in charge of all
12 the engineering. I sign, seal all the drawings, and I do
13 quality assurance and quality control on all the projects.

14 MR. RUHLEN: And have you ever testified as an
15 expert before the Office of Zoning and Administrative
16 Hearings in Montgomery County and if so, in what capacity
17 have you been qualified to testify?

18 MR. HURNEY: Yes. I=ve testified before the
19 hearing examiner and previously under the old Board of
20 Appeals format. I=ve also testified in the Circuit Court of
21 Montgomery County and numerous other jurisdictions in
22 Maryland and Virginia as a civil engineer and land planner.

23 MR. RUHLEN: Great.

24 EXAMINER: And land planner, did you say?

25 MR. HURNEY: Yes.

1 EXAMINER: Okay.

2 MR. RUHLEN: We=d like to move that Mr. Hurney be
3 admitted as an expert in civil engineering, site
4 development, and land use planning. His resume has been
5 submitted to the record previously.

6 EXAMINER: Correct. Okay. And you were admitted,
7 I mean you were accepted as an expert in both areas?

8 MR. HURNEY: Yes. You know, I know I=ve been
9 accepted as a land planner in different jurisdictions. I
10 can=t remember specifically --

11 EXAMINER: Okay.

12 MR. HURNEY: -- if it was at this one over the 38
13 years.

14 EXAMINER: Any objections to accepting him as a
15 expert civil engineer and land planner, Mr. Kauffunger?

16 MR. KAUFFUNGER: No.

17 EXAMINER: Okay. We will accept you as an expert
18 in those fields.

19 MR. RUHLEN: Great. Mr. Hurney, are you familiar
20 with the special exception application which is before us
21 today, case S-786-B?

22 MR. HURNEY: Yes. I am.

23 MR. RUHLEN: Please describe your responsibilities
24 with regard to this special exception application.

25 MR. HURNEY: As the principle of Huron Consulting,

1 I oversee all the engineering and oversaw the development of
2 this plan. I=ve done numerous site visits and reviewing all
3 the plans during their development.

4 MR. RUHLEN: Great. Would you please describe the
5 location of the property and the surrounding area?

6 MR. HURNEY: Okay. The property, I guess the best
7 is up on Exhibit 30 of the photos. The property is located
8 in the northwest quadrant of Layhill and Bel Pre Road. It
9 is in the Plaza del Mercado Shopping Center. It=s a
10 separate lot in the shopping center which fronts on Bel Pre
11 Road. It is contiguous with the C1 zoning around it.
12 There=s residential on the east side of the property and on
13 the west side. The Argyle County Club is to the north and
14 the Parker Farm Development is to the south of the property.

15 MR. RUHLEN: Okay. Great. And that=s to the east
16 side of the special exception site or to --

17 MR. HURNEY: To the Plaza del Mercado Shopping
18 Center. The site itself is surrounded entirely by C1
19 property.

20 MR. RUHLEN: Okay. Have you made a personal
21 inspection of the special exception, of the subject
22 property, and if so, can you describe the existing
23 improvements?

24 MR. HURNEY: Yes. I have. As shown on the
25 photographs, the existing site is a McDonald=s restaurant

1 which was constructed, you know, 30-40 years ago. It is in
2 the middle of the shopping center. On the existing plan,
3 the drive through basically loops around the building in the
4 same type of configuration that is proposed. However, the,
5 as you can see on the back on this photograph, the drive
6 through on the back side of the property basically converges
7 with the drive through of or the two-way drive aisle on the
8 north side of the property. The dumpster is, right now, in
9 the rear of the building. To access the dumpster, it
10 interferes with access for the drive through lane. You can
11 see here the back of a car which is right in front of where
12 the dumpster would be. So, there is conflicting traffic
13 movements in that configuration. The access to the site is
14 off of Bel Pre Road from an existing turn in which is a left
15 turn. If you're heading eastbound, a right turn. It has
16 both access. Leaving the site is a right out only on the
17 western side of the C1 property. Bel Pre road is a five
18 lane arterial in front of the site. There's basically a
19 center turn lane that allows people to access the property.
20 The existing square footage of the existing building is
21 3,562 square feet which includes 1,766, excluding the 1,766
22 square feet for the cellar which was described previously by
23 Mr. Eidenberger. The present building sits back
24 approximately 55 feet from the right of way line. However,
25 there is a playground area in front of the store which

1 extends out to approximately 30 feet from the right of way
2 line. Currently, the existing requires 47 parking spaces.
3 The parking spaces are based on the patron area of the
4 store. At the present time, 35 of those spaces are met by
5 offsite parking on the adjacent parcel through an agreement
6 with the same property owner. I think that=s basically most
7 of the points for the existing site.

8 MR. RUHLEN: Yeah. Now, can you tell us what the
9 proposed use of this site will be pursuant to this special
10 exception that=s before us today?

11 MR. HURNEY: The drive in restaurant will
12 basically be the same as it exists today but there=ll be
13 renovations to the building which is shown on Exhibit 17I
14 duplicate. The more modern building, more efficient layout
15 inside the building. So, in accordance with the
16 improvements, we also did improvements to the parking lot
17 and the drive through process. As had been pointed out
18 before, there are a number of conflicting traffic movements.
19 The onsite circulation for the existing store will keep the
20 exact same entrances onto Bel Pre and the exit off of Bel
21 Pre so there will be no changes to that. However, as you
22 enter the site, we have separated -- this is a one way drive
23 through at the present time heading northbound on the east
24 side of the building. That drive through will continue for
25 access northbound to the remaining shopping center in its

1 own dedicated lane. The drive through lanes will be
2 separated out along the side of the building. We'll be
3 putting in a brand new median with landscape berm and buffer
4 area to separate the two, the drive through and the traffic,
5 that's going through the shopping center. This will allow
6 the segregation of the two traffic movements. As we go
7 around the rear of the building at the ordering stations,
8 again, the area of the two lane traffic aisle which exists
9 in the shopping center will remain dedicated for the traffic
10 on the shopping center only. That will allow no conflict
11 with the ordering station and the shopping center traffic.
12 The flow will then continue around the building, through the
13 pickup windows and will exit through the southwest corner of
14 the site and go to either the right aisle or go back into
15 the shopping center. We have allowed -- we have put in a
16 brand new drive aisle in front of the restaurant which
17 allows for patrons in the shopping center, especially on the
18 west side or on the north side of the shopping center -- at
19 the present time, if they wish to get to McDonald's, they
20 either have to cut in line, into the queue, or go back onto
21 Layhill or Bel Pre onto the public road and then enter into
22 the drive-through through the entrance where they're
23 supposed to. However, what that does is causes traffic to
24 get back onto the roadway system. In order to prevent that,
25 we have located the drive aisle in front of the site so that

1 patrons in the shopping center can come in and then
2 circulate in a counter clockwise motion around the
3 McDonald=s. We still have sufficient buffer and landscaping
4 strip along the front of Bel Pre Road approximately 20 feet
5 in width so that we can landscape this area as well as also
6 get the traffic around it. Also --

7 EXAMINER: Can I just ask a question?

8 MR. HURNEY: Sure.

9 EXAMINER: That drive aisle. Did you say the
10 drive aisle on the east side, that=s a two way drive aisle?

11 MR. HURNEY: No. The drive aisle is one way.

12 EXAMINER: No. I mean into the shopping center.

13 MR. HURNEY: It=s one way.

14 EXAMINER: Okay.

15 MR. HURNEY: At the present time and in the
16 future, it continues that way.

17 EXAMINER: Not the drive through but the drive
18 aisle into the --

19 MR. HURNEY: The drive aisle itself. At the
20 present time, and it=s hard to see but there=s a do not
21 enter sign up here.

22 EXAMINER: Okay.

23 MR. HURNEY: There is no real method to stop you
24 from doing that.

25 EXAMINER: Yeah.

1 MR. HURNEY: Again, it gets into the free-fall
2 motion. That=s why, in addition to the landscaping we=re
3 putting here, we=re adding a little bit of landscaping over
4 here so that this will be just a one way at that point.

5 EXAMINER: I see.

6 MR. HURNEY: We will continue to have the do not
7 enter signs there and we will probably put an arrow there,
8 too, to reinforce the one way circulation pattern. So,
9 it=ll be a lot more defined as a one way access.

10 EXAMINER: Okay.

11 MR. HURNEY: The only reason, down in this area,
12 this entrance is two ways, in and out.

13 EXAMINER: That=s where I was confused.

14 MR. HURNEY: Because of up here as you can see in
15 the photo, this is a gas station.

16 EXAMINER: I see.

17 MR. HURNEY: And the gas station has an entrance
18 onto Bel Pre to the east of the site but cars basically due
19 a circulation through the pump aisles, and they exit out
20 here. So, that=s why we have this truncated area here --

21 EXAMINER: I understand.

22 MR. HURNEY: -- so they will not be able to cut
23 across because this is one way. We have the island here to
24 deflect traffic so they=ll go here. It=s only intended that
25 the people at the Shell gas station would be able to leave

1 at this point.

2 EXAMINER: Okay. All right. And that=s why you
3 have that.

4 MR. HURNEY: That=s why we have that. The parking
5 on this side is a little bit hard to see. That is angled
6 parking in this direction so that it facilitates the one way
7 movement.

8 EXAMINER: Okay.

9 MR. HURNEY: There=s a Starbucks up here. So, the
10 Starbucks= people have to go in here and then they have to
11 loop around into the site.

12 EXAMINER: Okay. I understand.

13 MR. HURNEY: So, another part of the site
14 improvements that we were looking at was, and it goes back
15 to the master plan, is improving pedestrian circulation. At
16 the present time, if you=re coming off of Bel Pre Road, you
17 basically have to walk up one of the drive aisles to get to
18 the site. We have included a crosswalk in front of the
19 store that will tie into the Bel Pre Road sidewalk system.
20 This will be ADA accessible. We=ll have a ramp in front
21 here. The crosswalk will be striped and delineated. We
22 have also provided ADA parking on this side of the building.
23 EXAMINER: Okay.
24 MR. HURNEY: There is ADA parking spaces over here
25 on the Starbucks= side and again, we also have the ADA ramps

1 on this side of the building so that we=ll have ADA access
2 from this side or from the front of the store.

3 EXAMINER: I=m sorry to interrupt. What condition
4 was it that you asked, from the staff report, that you asked
5 the planning board to remove?

6 MR. HURNEY: Over in the southwest corner of the
7 site, again, we have a sidewalk in front of the store. We
8 have the ADA accessible ramp in this area.

9 EXAMINER: Uh-huh.

10 MR. HURNEY: There are parking spaces on the west
11 side of the store that are in the shopping center area. The
12 staff wanted to make sure that we delineated a crosswalk --

13 EXAMINER: Oh. I see.

14 MR. HURNEY: -- from this area to the front of the
15 store. We included the crosswalk and we=re striping that in
16 that area. One of the comments was is to also provide an
17 ADA ramp on this corner of the sidewalk for the crosswalk.
18 The issue is is that the parking lot, if you look on this
19 photo up here, you see the school bus. It=s hard to see.
20 But, the roof line of the Plaza del Mercado Shopping Center
21 and the bus --

22 EXAMINER: I see.

23 MR. HURNEY: -- are diverging. That=s because the
24 west parking lot is on about a seven percent cross slope --

25 EXAMINER: Okay. I can see --

1 MR. HURNEY: -- in the existing parking lot, and
2 we are tying in right here on the pavement. So, we cannot
3 do anything to the pavement or the parking over on this side
4 of the site --

5 EXAMINER: Okay.

6 MR. HURNEY: -- because of parking. We=re going
7 to have this and this will probably be like a rolled curb so
8 that if someone is with a bicycle, they=ll be able to come
9 up on that side. However, we don=t want to put an ADA ramp
10 there, encourage somebody in a wheelchair to --

11 EXAMINER: Because the grade is -- well, I=m not
12 sure it would meet the standards.

13 MR. HURNEY: It doesn=t. It doesn=t meet the
14 standards and we don=t want to --

15 EXAMINER: Right.

16 MR. HURNEY: -- indicate that it does meet the
17 standards and have them go into a parking lot on a seven or
18 eight percent cross slope. They probably wouldn=t be able
19 to stop. One of the other additions that the staff has
20 asked to do, which will include a site plan, is on the south
21 side of the crosswalk, over in this area --

22 EXAMINER: Uh-huh.

23 MR. HURNEY: -- we=re going to put another small
24 island which will, again, give a little bit of what they=re
25 calling a pedestrian refuge area. It=ll just be down in

1 this area. It won=t affect the circulation at all but it
2 will have a little bit of a barrier here so that if someone
3 is coming this way across or this way making the turn, a
4 left hand turn from the shopping center into the front drive
5 aisle, that it will provide a little bit of a safe haven for
6 pedestrians so they can stop in that area.

7 EXAMINER: But that=s not shown now?

8 MR. HURNEY: That=s not shown on a special
9 exception plan because that was not indicated on the special
10 exception we put. That was a comment that came in late last
11 week. We=re going to add that on the site plan.

12 EXAMINER: Okay.

13 MR. HURNEY: We have agreed to it with staff that
14 we will do that. Let=s see. I think that=s traffic
15 circulation. The dumpster, again, as we stated before on
16 the existing condition, the dumpster is in the rear of the
17 building which is in conflict with the drive through
18 situation. As people come in, you know, whoever gets there
19 first either the dumpster blocks the drive aisle or the
20 drive aisle blocks the dumpster. Again, to get a more
21 efficient operation, we have located the dumpster to the
22 west side of the site. It allows for the dumpster, the
23 truck to come in in a motion from the east, coming and pick
24 up the trash. The enclosure is completely on lot 2 of -- it
25 abuts up to the property line. We have obtained permission

1 from Federal Realty to put the dumpster on that property.
2 It=s not necessary to have it over here. We did that
3 because we found the safest place to put it and give access
4 to the trash truck while getting that movement out of the
5 drive aisle situation on both the cross drive aisle for the
6 shopping center and the drive loop for the McDonald=s
7 restaurant. There were a couple of places we looked at
8 before. We could have put it back here in basically the
9 same type of situation on this island over here. There=s
10 also room in front of the site based on the -- we have a 10
11 foot building restriction line. The dumpster=s 10 feet
12 wide. We have 20 feet here. We could have put it in this
13 location. For aesthetics especially, we did not look at
14 putting it in front of the building. We didn=t think that
15 was the proper place to put it. In the rear island in the
16 back, again, you would start getting into movements with the
17 cross drive aisle and, again, we could have put it in the
18 same location but in the general way out configuration of
19 the lots, we felt that this was the most appropriate place
20 to put it for aesthetics and for operational efficiency.

21 EXAMINER: Now, is that included in the special
22 exception area?

23 MR. HURNEY: Yes. The area for the dumpster is
24 included in the special exception area. That=s why the
25 special exception area is slightly higher than the square

1 footage for the lot.

2 EXAMINER: Okay.

3 MR. HURNEY: I think it=s 434 square feet.

4 MR. RUHLEN: Yeah. Yeah.

5 EXAMINER: I should have asked Mr. Eidenberger
6 this probably but the Board of Appeals rules require
7 submission of a lease for both, you know, the special
8 exception area and the dumpster area or some document. It
9 could be a cross easement, and I didn=t see either of those
10 in the file.

11 MR. RUHLEN: We actually have a copy of the lease
12 which we can submit if you=d take it.

13 EXAMINER: For both areas?

14 MR. RUHLEN: For the current area. I believe --

15 EXAMINER: What=s the current area?

16 MR. RUHLEN: For the existing special which would
17 be the lot 3 area.

18 MR. HURNEY: Lot 3.

19 EXAMINER: And what about that small portion on
20 lot 2?

21 MR. RUHLEN: We understand that that has to be,
22 based on the hearing examiner=s comments, that that would
23 have to be dealt with prior to the Board of Appeals
24 decision. So, that=s --

25 EXAMINER: Okay. I just wanted to make sure you

1 had that.

2 MR. RUHLEN: Yes. That=s an item that=s in
3 process.

4 EXAMINER: Okay. And you=re going to introduce
5 those today?

6 MR. RUHLEN: We can introduce the lease for the
7 lot 3.

8 EXAMINER: Okay. All right. Do you want to show
9 the lease to Mr. Kauffunger?

10 MR. RUHLEN: Sure.

11 EXAMINER: Do you wish to see the lease or --

12 MR. HURNEY: The lease is not the issue.

13 EXAMINER: For you. Okay.

14 MR. HURNEY: Yes. So, no need to see it.

15 MR. RUHLEN: Yes. Just to clarify. The lease is
16 for the lot 3 area but not, just to make sure that we=re
17 clear, not currently for the area we=re putting the
18 dumpster.

19 EXAMINER: Dumpster area.

20 MR. RUHLEN: Right.

21 EXAMINER: Yeah. I understood that.

22 MR. RUHLEN: Right. So, that would be dealt with
23 likely through an easement or an amendment to the lease or
24 something like that.

25 EXAMINER: Okay. But, I don=t need that for this

1 hearing.

2 MR. RUHLEN: Yes.

3 EXAMINER: But there is case law. I think you are
4 going to need it prior to the Board of Appeals.

5 MR. RUHLEN: Yes.

6 EXAMINER: So, I'm going to mark this lease
7 between, is it FLV? Is that a fair acronym? So, this will
8 be Exhibit 32. Between FLV and McDonald=s Corporation. All
9 right. And so that will be admitted into the record.

10 MR. RUHLEN: Thank you.

11 EXAMINER: I keep interrupting you, Mr. Hurney.

12 MR. HURNEY: No problem. No problem.

13 EXAMINER: You can go ahead.

14 MR. HURNEY: Okay. I guess the other is on the
15 parking. The parking for the site in accordance with
16 Montgomery County regs is based on the patron area. The
17 existing patron area of the new restaurant is actually less
18 than the patron area of the existing restaurant that is out
19 there at the present time. So, we require, 29 parking
20 spaces will be required for the lease. We have 13 on site.
21 The existing restaurant with the lease allows us 35 spaces
22 on the adjacent shopping center parking lot. So, it gives
23 us a total of 48 spaces, and for the patron area for the new
24 restaurant, we only are required 29 spaces.

25 EXAMINER: Okay. Is that contained in this

1 amendment to the lease, Exhibit 32, your right to use the
2 parking spaces?

3 MR. RUHLEN: I'm not sure that it=s in this
4 amendment, actually. Yes. I don=t believe that it=s in
5 this amendment. We understanding that=s in the existing,
6 the main lease that this amendment is to.

7 EXAMINER: Okay. Is it possible to get a copy of
8 the main lease, and you can redact out things like dollar
9 amounts and things like that.

10 MR. RUHLEN: Sure.

11 EXAMINER: We just need a copy of that in the
12 record.

13 MR. RUHLEN: We will work with the applicant to
14 get that. We were --

15 EXAMINER: Since your request is for the waiver.

16 MR. RUHLEN: Sure. We were trying to move quickly
17 in response to the e-mail from last week. So --

18 EXAMINER: I understand. It=s fine. Okay. I=m
19 not interrupting.

20 MR. HURNEY: Okay.

21 EXAMINER: Although I may.

22 MR. HURNEY: That=s fine.

23 EXAMINER: Go ahead.

24 MR. HURNEY: That=s fine. The other issue to
25 discuss is, again, with the existing traffic movement with

1 the drive aisle which goes up, basically, on the east side
2 of the building. There is no specified area for loading
3 space. What we have shown on the new plan is there=s a
4 crosshatched area just to the west of the drive through
5 aisle --

6 EXAMINER: Yes.

7 MR. HURNEY: -- which allows for the truck to load
8 in that area, load, unload. So, the loading operation, the
9 drive aisle, and the drive through to the shopping center
10 are three distinct lanes so that those can function
11 concurrently.

12 EXAMINER: Independently.

13 MR. HURNEY: Independently of each other. We have
14 basically at this back area here in between the two
15 landscaped aisles, that other crosshatched area, will be a
16 raised hump type of median which will, again, discourage
17 people from trying to get in from the north but will allow a
18 tractor/trailer to roll over that to get out of the site.

19 EXAMINER: Okay.

20 MR. HURNEY: So, we have accommodated the loading,
21 you know.

22 EXAMINER: Is that where it=s hatched?

23 MR. HURNEY: Yes. The area that=s hatched will
24 be --

25 EXAMINER: Okay. I see.

1 MR. HURNEY: It=ll be a raised hump in concrete,
2 sand we=ll make it fairly significant so a car would have
3 difficulty getting over but a tractor/trailer will not.

4 EXAMINER: Okay.

5 MR. HURNEY: And I believe that=s most of the
6 points --

7 EXAMINER: Okay.

8 MR. HURNEY: -- for the site.

9 MR. RUHLEN: Okay. Mr. Hurney, are you familiar
10 with the 1994 Aspen Hill master plan?

11 MR. HURNEY: Yes. I am.

12 MR. RUHLEN: Does the master plan apply to the
13 subject property?

14 MR. HURNEY: Yes. The master plan actually even
15 has a separate article or paragraph about the Plaza del
16 Mercado Shopping Center and some recommendations for the
17 development and re-development of that shopping center.

18 MR. RUHLEN: Okay. Have you reviewed the official
19 zoning map for the property and the surrounding area?

20 MR. HURNEY: Yes. I have.

21 MR. RUHLEN: What is the current zoning
22 classification of the property?

23 MR. HURNEY: The current zoning is C1 commercial,
24 and the surrounding use is basically residential on the
25 east, west, and south of the shopping center property.

1 MR. RUHLEN: What about surrounding zoning?

2 MR. HURNEY: The surrounding zoning is residential
3 on -- there=s the Parker Farm residential to the south of
4 the property across Bel Pre Road. There=s some residential
5 to the west side. Across Layhill Road there=s residential
6 on the east side and then the Argyle Country Club is on the
7 north side of the Plaza del Mercado Shopping Center.

8 MR. RUHLEN: Okay. This is foundational but I
9 want to make sure that we have it before we proceed. What
10 is the zoning on the Plaza Del Mercado?

11 MR. HURNEY: The Plaza Del Mercado is C1.

12 MR. RUHLEN: Okay.

13 EXAMINER: Including the area where the dumpster
14 is?

15 MR. HURNEY: Yes.

16 MR. RUHLEN: Okay. Are you familiar with the
17 zoning ordinance of Montgomery County including its
18 provisions related to the C1 zone?

19 MR. HURNEY: Yes. I am.

20 MR. RUHLEN: Do any of these zoning ordinance
21 provisions for the C1 zone require setbacks for buildings
22 and structures and if so, could you identify those
23 provisions?

24 MR. HURNEY: Yeah. The C1 zone setbacks has a
25 front setback based on the road. If it=s an approved master

1 plan, which Bel Pre is, at that point, there=s a 10 foot
2 building restriction line along the right of way. Our
3 building is set back, you know, 45 feet or so. So, we=re
4 well in conformance with that. If the zone adjoins
5 residential, then it has to be meet those setbacks for the
6 residential but we do not adjoin residential. We have C1 on
7 both sides and the rear. In that case, the setback is zero.

8 EXAMINER: Okay.

9 MR. HURNEY: So, the basic of those -- we have
10 zero setbacks on either side but we=re well above that on
11 both sides and the rear but there is no setback required.

12 MR. RUHLEN: In your opinion, does the special
13 exception application comply with the setback requirements
14 established in the zoning ordinance?

15 MR. HURNEY: Yes. It does.

16 MR. RUHLEN: Okay. Are you familiar with the
17 zoning ordinance requirements for special exception per
18 rule?

19 MR. HURNEY: Yes. I am.

20 MR. RUHLEN: Are you also familiar with the
21 specific requirements in the zoning ordinance for drive in
22 eating and drinking establishments?

23 MR. HURNEY: Yes. I am.

24 MR. RUHLEN: Okay. I=m now going to ask you a
25 series of questions based on both your knowledge of the

1 zoning ordinance, both the general and specific requirements
2 for special exception per rule and your familiarity with the
3 project as well as your professional expertise. Is the
4 special exception use allowed in the C1 zone?

5 MR. HURNEY: Yes. It=s allowed as a special
6 exception approval which has already been previously
7 obtained for this site for the use of the drive through
8 restaurant.

9 MR. RUHLEN: Okay. Does the special exception
10 comply with the zoning ordinance standards and requirements
11 for a drive in eating and drinking establishment?

12 MR. HURNEY: Yes. It does.

13 MR. RUHLEN: More specifically, will the special
14 exception constitute a nuisance because of noise,
15 illumination, fumes, odors, or physical activity?

16 MR. HURNEY: No. No impact on noise,
17 illumination, fumes, odors. It=s basically identical to the
18 existing use. Actually, the inside operations of the
19 McDonald=s will have a state of art filtration ventilation
20 systems over top of the existing. It will have a new
21 corral, masonry corral, for the dumpster area to enclose
22 that. The lighting that we install will basically be modern
23 lighting. It will be the shoot box type of light which will
24 be directed downward with no glare. We=ve done a
25 photometric=s plan for the site to make sure that it

1 complies with Montgomery County requirements, and as I said,
2 I think as far as the noise and deliveries and everything
3 else, I think those have been accommodated as I've discussed
4 previously.

5 MR. RUHLEN: Will the special exception ensure
6 that traffic hazards or traffic nuisances are not created
7 and not cause frequent turning movements across sidewalks or
8 pedestrian walkways?

9 MR. HURNEY: Yes. And I think more of the traffic
10 will be discussed by the traffic engineer.

11 MR. RUHLEN: Sure. Will the special exception
12 pre-empt frontage on any major highway or public road?

13 MR. HURNEY: No. The property is self-contained,
14 and it fronts onto Bel Pre at the present time?

15 MR. RUHLEN: Does the special exception apply to
16 residential zone or any institutional property?

17 MR. HURNEY: No. It's C1 on all three sides and
18 on Bel Pre Road.

19 MR. RUHLEN: Will signs for the special exception
20 be placed in conformance with county standards?

21 MR. HURNEY: Yes. We will go through DBS for sign
22 approval for the site.

23 MR. RUHLEN: And you mention lighting. Will
24 lighting for the special exception protect against
25 reflections or glare into any residential zones?

1 MR. HURNEY: Yes. Again, we=ll use the downward
2 boxed lighting. It=s an 80 foot right of way with Parker
3 Farms as the closest which is across the street, and they=re
4 set back off of it, and our closest light will be, you know,
5 about 50 feet away from the right of way. So, it will not
6 affect any glare on the residential.

7 MR. RUHLEN: Okay. Is the subject property a
8 corner lot?

9 MR. HURNEY: No. It=s not.

10 MR. RUHLEN: Does a need exist for the special
11 exception use?

12 MR. HURNEY: Yes. The need was established for
13 the special exception in the previous approval for the
14 McDonald=s restaurant and the existing amendment will not
15 altar that use.

16 MR. RUHLEN: Will the special exception result in
17 a multiplicity of similar uses in the same area?

18 MR. HURNEY: No. The restaurant replaces the
19 existing one.

20 MR. RUHLEN: Will the special exception be
21 consistent with the master plan?

22 MR. HURNEY: Yes. It is in conformance with the
23 Aspen Hill master plan.

24 MR. RUHLEN: Okay. Will the special exception be
25 in harmony with the general character of the neighborhood?

1 MR. HURNEY: Yes. You know, I think in harmony,
2 we=re looking at the population density where there will be
3 no affect on the residential population. The design scale
4 and bulk of the proposed facility, will basically be very
5 similar to what=s out there at the present time. I think
6 the architecture is a lot more aesthetically pleasing. It
7 is consistent with the other retail structures in the area.
8 The intensity and character of the activity is compatible
9 with the existing, you know, there=s actually a reduction in
10 the patron area. There will be improved circulation and
11 pedestrian access. Traffic will be discussed a little bit
12 later with the traffic engineer but the onsite traffic
13 movements are a lot more efficient and safe then the
14 current. Parking. We have sufficient amount of parking for
15 the site. Actually exceed the number required, and I don=t
16 think there was any other impacts on the site.

17 MR. RUHLEN: Okay. Will the special exception
18 impact the use, peaceful enjoyment, economic value, or
19 development of surrounding properties of the general
20 neighborhood?

21 MR. HURNEY: The county=s previously determined
22 that the restaurant was not detrimental to the use or the
23 enjoyment of the surrounding properties. Drive through is
24 consistent with the retail orientation of the shopping
25 center and the economic value of the surrounding properties

1 will not be diminished. In fact, I think this would be a
2 little bit of an enhancement to an older shopping center. A
3 little bit of a modernization and hopefully an encouragement
4 of further re-development and future enhancements with the
5 shopping center.

6 MR. RUHLEN: Will the special exception protect
7 against objectionable noises, vibrations, fumes, odors,
8 dust, glare, physical activity, et cetera?

9 MR. HURNEY: Yeah. I think the county has
10 previously determined that it will not have any adverse
11 impacts on those items. The special exception amendment
12 will not generate any more impacts on those conditions and I
13 think the, you know, allowing the new site circulation and
14 everything will definitely improve the property.

15 MR. RUHLEN: Will the special exceptions increase
16 the number in intensity or scope of other special exception
17 uses in the area?

18 MR. HURNEY: There=s no change in those.

19 MR. RUHLEN: Will the special exception impact the
20 health, safety, security, moral, or general welfare of
21 residents, visitors or workers?

22 MR. HURNEY: No. There=ll be no impact. In fact,
23 as I think I=ve said, I think it=ll be a safer site for the
24 residents.

25 MR. RUHLEN: Will the special exception be served

1 by adequate public facilities, public services and
2 facilities, including schools, police, fire protection,
3 water, sanitary, sewer, public roads, storm drainage?

4 MR. HURNEY: Yes. The existing site is already on
5 water and sewer. There is a WSCC water main in front of Bel
6 Pre Road, sanitary, sewer. We will connect into WSCC to get
7 those improvements. The storm water will be done in
8 accordance with Montgomery County standards. We've already
9 obtained storm water management concept approval for the
10 site and, you know, police and fire access is adequate on
11 the site.

12 MR. RUHLEN: Will the special exception comply
13 with the development standards for the C1 zone?

14 MR. HURNEY: Yes. It will.

15 MR. RUHLEN: Okay. Will the special exception
16 comply with the parking requirements of Article 59E?

17 MR. HURNEY: Yes. As I said, we had the required
18 number of spaces. You know, there is a parking waiver in
19 there for the use of the shopping center spaces but as this
20 was developed back in the 60s, it was fairly common for
21 shopping centers of this type to have that use of the spaces
22 they looked as an overall, on a lot, configuration.

23 MR. RUHLEN: In your professional opinion, would a
24 waiver from parking requirements be justified?

25 MR. HURNEY: Yes. It would.

1 MR. RUHLEN: Can you describe why?

2 MR. HURNEY: As I said, based on the way things
3 were developed back in, when the shopping center was put in,
4 a lot of these shopping centers, they were always looked at
5 as one development even though they had the lot lines that
6 went over them. The use of the existing parking spaces was
7 kind of common. This site has the 35 that are associated
8 with that which, you know, puts us way over what the
9 required parking number is, and I think that in general,
10 too, with ESD and water quality aspects and everything else,
11 that, you know, you want to minimize the extent of overdoing
12 parking in those areas.

13 MR. RUHLEN: Has anyone else reviewed the need for
14 a parking waiver and found approval that such a waiver be
15 justified?

16 MR. HURNEY: Yes. The planning board staff has
17 reviewed it and the planning board discussed it at their
18 hearing and agreed with the waiver.

19 MR. RUHLEN: Okay. Is the storm water management
20 concept plan required for this special exception?

21 MR. HURNEY: Yes. We=ll need to get storm water
22 management approval, of course, through Montgomery County.
23 We=ve already obtained storm water concept approval from DPS
24 for the site.

25 MR. RUHLEN: And does the special exception

1 require preparation for the preliminary force conservation
2 plan?

3 MR. HURNEY: This site, we filed for a forest
4 conservation exception. It was approved by the
5 environmental staff at park and planning.

6 MR. RUHLEN: Is the property subject to an
7 approved water quality plan?

8 MR. HURNEY: No. It=s not in a special protection
9 area.

10 MR. RUHLEN: Okay.

11 MR. HURNEY: Just the north storm water management
12 concept.

13 MR. RUHLEN: In your professional opinion, does
14 the proposed special exception satisfy all applicable code
15 requirements?

16 MR. HURNEY: Yes. It does.

17 MR. RUHLEN: Is there anything else that you would
18 like to add?

19 MR. HURNEY: Not at the present time.

20 MR. RUHLEN: Okay. Questions?

21 EXAMINER: Thank you, Mr. Hurney. I do have two
22 more questions that I thought of while you were testifying
23 before I ask Mr. Kauffunger if he has any. That dumpster.
24 Is that a permitted use on the adjacent property?

25 MR. HURNEY: It can be put in as an accessory

1 structure on the adjacent property.

2 EXAMINER: Well, usually you have a principle
3 activity on that lot

4 MR. HURNEY: Right.

5 EXAMINER: -- and then you have an accessory
6 structure to that principle activity. But, what you=re
7 doing is putting an accessory structure -- so, my question
8 is have you ever had DPS review to make sure that that
9 dumpster on the adjoining property is permitted?

10 MR. HURNEY: There=s no requirement for the number
11 of dumpsters that you have on a shopping center for a site.
12 I mean, they do require --

13 EXAMINER: Okay. I see.

14 MR. HURNEY: They do require you to have
15 dumpsters. For the Plaza Del Mercado, there=s probably like
16 30 uses out there --

17 EXAMINER: Okay.

18 MR. HURNEY: -- or so in the shopping center. In
19 a site like that, you will have a common area for dumpsters.
20 It=ll be a little bit larger for it=s based on the space.

21 EXAMINER: Right.

22 MR. HURNEY: Some of the uses may have their own.
23 Like the food store that was up there. It would probably
24 have its own dumpster area. But, some of that like a hair
25 salon or, you know, a little retail or real estate office or

1 something like that not=s going to have their own dumpster
2 close. They would have one that would be a common share
3 dumpster so that you could get approvals for building permit
4 to put in a dumpster area like this. This would be a
5 structure because it=s a masonry structure. So, you=d have
6 to get a building permit. DPS will look at it to make sure
7 it meets the setback requirements.

8 EXAMINER: Which you say there are not.

9 MR. HURNEY: Which we meet the setback
10 requirements.

11 EXAMINER: Yeah.

12 MR. HURNEY: Right. Height and setback.

13 EXAMINER: So, you=re saying this could be an
14 accessory use in general for the shopping center.

15 MR. HURNEY: It=ll be an accessory structure.
16 It=ll be an accessory structure. Yeah. I mean, you just go
17 in and apply for a building permit for it, you know.

18 EXAMINER: Right.

19 MR. HURNEY: But, since it=s in a shopping center
20 and it=s for --

21 EXAMINER: Is it for your exclusive use?
22 McDonald=s exclusive use?

23 MR. RUHLEN: Well, I believe that would be
24 addressed through whatever document is ultimately -- sets up
25 the right to use it, the lease or the easement or whatever.

1 EXAMINER: Oh. Okay. All right. And now I
2 forgot my second question. Mr. Kauffunger, I=m going to
3 turn it over to you. Do you have any questions of Mr.
4 Hurney? Solely for questions not for testimony.

5 MR. KAUFFUNGER: No questions at this point.

6 EXAMINER: No questions? All right. Thank you,
7 Mr. Hurney. You can be excused.

8 MR. HURNEY: Thank you.

9 EXAMINER: Mr. Ruhlen, your next witness?

10 MR. RUHLEN: Sure. We=ll call Mr. Workosky.

11 EXAMINER: Oh. Wait. Mister, I=m sorry. I
12 remembered it.

13 MR. HURNEY: You remembered. Okay.

14 EXAMINER: Do you happen to know what percentage
15 of the business here is drive through versus eat in?

16 MR. HURNEY: I don=t.

17 EXAMINER: You probably don=t because you=re the
18 land planner. All right. With that, now you=re really
19 excused.

20 MR. HURNEY: Okay.

21 EXAMINER: Unless your attorney wants you to stay.

22 MR. RUHLEN: No. Mr. Hurney can be excused.

23 MR. WORKOSKY: Good morning.

24 EXAMINER: Good morning. Please raise your right
25 hand. Do you solemnly affirm under penalties of perjury

1 that the statements you=re about to make are the truth, the
2 whole truth, and nothing but the truth?

3 MR. WORKOSKY: Yes.

4 EXAMINER: Thank you. Please state your name and
5 address for the record.

6 MR. WORKOSKY: My name=s Mike Workosky. It=s, W-
7 O-R-K-O-S-K-Y.

8 EXAMINER: Okay.

9 MR. WORKOSKY: My address is 1420 Springhill Road,
10 Suite 600, McLean, Virginia 22102

11 EXAMINER: Thank you. Mr. Ruhlen?

12 MR. RUHLEN: Mr. Workosky how long have you been
13 employed as a transportation planner?

14 MR. WORKOSKY: Twenty-three years.

15 MR. RUHLEN: Who=s your current employer and what
16 is your employer=s full business address? I think you just
17 gave it.

18 MR. WORKOSKY: Yes. Wells and Associates, 1420
19 Springhill Road.

20 MR. RUHLEN: Yeah. What is your current position
21 and what are your responsibilities?

22 MR. WORKOSKY: I=m the vice-president of the
23 McLean office. I=m the transportation planner, and my
24 primary responsibilities are to prepare traffic and parking
25 studies, review those studies, and provide public hearing

1 testimony among other responsibilities.

2 MR. RUHLEN: Have you ever testified as an expert
3 before the Montgomery County Office of Zoning and
4 Administrative Hearings, and if so, in what capacity have
5 you been qualified to testify?

6 MR. WORKOSKY: I have testified in front of the
7 hearing examiner and other planning boards in Montgomery
8 County, and most of the jurisdictions in the Washington area
9 and other states.

10 MR. RUHLEN: Okay. We would move that Mr.
11 Workosky be admitted as an expert in transportation planning
12 and traffic engineering, and we've already submitted his
13 resume.

14 EXAMINER: Correct. Mr. Kauffunger, do you have
15 any objections?

16 MR. KAUFFUNGER: Well, I have a question or two?

17 EXAMINER: Okay. You can ask questions.

18 MR. KAUFFUNGER: Are you a professional engineer?

19 MR. WORKOSKY: I am not.

20 MR. KAUFFUNGER: Okay.

21 MR. WORKOSKY: I'm a professional transportation
22 planner by license.

23 MR. KAUFFUNGER: Okay. And where did you obtain
24 your education?

25 MR. WORKOSKY: I went to California, University of

1 Pennsylvania for industrial engineering technology, and I've
2 got a -- I'm also a traffic operations practitioner
3 specialist and a traffic operations specialist both by
4 examination.

5 MR. KAUFFUNGER: Okay. Thank you. No objections.

6 EXAMINER: We're qualifying him as a
7 transportation planner. Is that correct?

8 MR. RUHLEN: An expert in transportation planning,
9 traffic engineering.

10 EXAMINER: Okay. Well, wait. He's not a
11 professional traffic engineer. Are you a civil engineer?

12 MR. WORKOSKY: No. Transportation planner.

13 MR. RUHLEN: Transportation planner.
14 Transportation planner.

15 EXAMINER: Okay. We'll do that. Thank you.

16 MR. RUHLEN: Are you familiar with special
17 exception case S-786-B?

18 MR. WORKOSKY: Yes. I am.

19 MR. RUHLEN: Please describe your responsibilities
20 with regard to the special exception application.

21 MR. WORKOSKY: We observe the existing traffic
22 conditions out in the field on a typical weekday and
23 Saturday. We review the current or the existing and the
24 proposed site plans and also analyze the county requirements
25 regarding the local area transportation review and the

1 policy area mobility report.

2 MR. RUHLEN: Okay. Have you made a personal
3 inspection of the special exception site, and are you
4 familiar with the area surrounding the property?

5 MR. WORKOSKY: Yes. I have.

6 MR. RUHLEN: Are you familiar with Montgomery
7 County=s local area transportation review and policy area
8 transportation review guidelines?

9 MR. WORKOSKY: Yes. I am.

10 MR. RUHLEN: Did you prepare a written report
11 comparing the existing uses on the site with the proposed
12 special exception?

13 MR. WORKOSKY: Yes. We prepared a traffic
14 statement regarding the -- addressing both LATR and PAMR
15 requirements.

16 MR. RUHLEN: Okay. Is the proposed special
17 exception subject to LATR requirements?

18 MR. WORKOSKY: It is not based on the statement
19 that we prepared.

20 MR. RUHLEN: Same question. Is the proposed
21 special exception subject to policy area mobility review?

22 MR. WORKOSKY: It is not.

23 EXAMINER: Is that because of the reduced size of
24 the facility?

25 MR. WORKOSKY: Yes.

1 EXAMINER: It=s under the existing trips?

2 MR. WORKOSKY: Correct.

3 EXAMINER: Okay.

4 MR. RUHLEN: I=ll go ahead. Please summarize the
5 findings of your traffic statement.

6 MR. WORKOSKY: We calculated the number of trips
7 that the restaurant generated, would generate for the peak
8 hours under both the existing and the proposed conditions.
9 There is a reduction in the GFA, the square footage, which
10 is one of the independent variables used to calculate trips.
11 However, since there is that slight reduction, we looked at
12 the number of seats that the restaurant would provide
13 because that=s another variable and thought that that would
14 be more relevant since there are outdoor seating and the
15 specifications for calculating those trips specifically
16 indicates that the GFA numbers do not account for outdoor
17 seating. So, we use the number of seats to calculate those
18 number of trips. So, with the rebuild of the site, there
19 would be a reduction in the number of seats from 121 to 80
20 when you include the outdoor seating. So, theoretically,
21 there is a reduction, if you will, in peak hour traffic, and
22 that=s what our traffic statement indicated but it did
23 acknowledge that this is not a new project. It=s in an
24 established area and has a mature market, you know. I
25 suspect the customers are all repeat customers. That sort

1 of thing. So, there is the theoretical side where we meet
2 the exemptions for LATR and PAMR but we recognize that we=ll
3 still generate roughly the same number of peak hour trips
4 that occur today.

5 EXAMINER: Okay.

6 MR. RUHLEN: Okay. Would you please describe how
7 vehicles currently enter and exit the property?

8 MR. WORKOSKY: As Mr. Hurney mentioned in his
9 testimony, there=s a full movement driveway on Bel Pre Road
10 which allows both left turns and right turns from Bel Pre
11 Road. That=s the main access. There=s also another
12 intersection to the west, Parker Farm, which is a signalized
13 intersection. It allows all movements there as well.

14 MR. RUHLEN: And would you please describe the
15 proposed access into and out?

16 MR. WORKOSKY: Well, the proposed access would
17 primarily stay as is today. Again, as Mr. Hurney mentioned,
18 two way drive aisle here up until this point to allow access
19 to the service station and building on the east side and
20 then a one way drive aisle as is today leading into the
21 shopping center.

22 MR. RUHLEN: In your opinion, will the special
23 exception create a traffic hazard or traffic nuisance or
24 cause frequent turning movements across sidewalks and
25 pedestrian areas?

1 MR. WORKOSKY: I don=t believe so. I think the
2 condition that, the proposed condition, will improve many of
3 those movements that exist today.

4 MR. RUHLEN: Okay. Has anyone else reviewed the
5 proposed special exception in terms of traffic impacts?

6 MR. WORKOSKY: Yes. The park and planning staff
7 reviewed the traffic statement that we prepared.

8 MR. RUHLEN: Okay. Did transportation staff agree
9 that the special exception would not create a traffic hazard
10 or a traffic nuisance or cause frequent turning movements?

11 MR. WORKOSKY: They did agree to that. Yes.

12 MR. RUHLEN: With regard to vehicle circulation on
13 the property, did you observe vehicles using the existing
14 drive through?

15 MR. WORKOSKY: Yes. I did.

16 MR. RUHLEN: Please describe the existing drive
17 through in terms of functionality.

18 MR. WORKOSKY: The existing drive through, as Mr.
19 Hurney alluded to in his testimony, the way that vehicles
20 access the drive through today, I guess you can see it on
21 this one better. There is parking along the eastern side of
22 the building and vehicles come up to sort of the north end
23 of the building. They turn left and get into the drive
24 aisle. They order at the northern end of the building, come
25 down on the western side and pick up there and then come

1 back out. There is a right out only onto Bel Pre Road on
2 the west side of the building which I failed to mention
3 earlier. This is a right turn only.

4 EXAMINER: Where do people want to go -- how do
5 they exit if they want to go left on to Bel Pre?

6 MR. WORKOSKY: They come out of the drive through
7 and they turn right. They go up the drive aisle, turn left,
8 go over to the western side over to the --

9 EXAMINER: Okay.

10 MR. WORKOSKY: -- signalized intersection, Parker
11 Farm.

12 EXAMINER: All right. Thank you.

13 MR. WORKOSKY: In, I guess, describing the
14 existing conditions, we observed the queue and traffic
15 operations in the field during a typical week day and
16 Saturday. So, we observed it during the morning peak hour,
17 the midday peak hour, the evening peak hour and then
18 Saturday in the middle of the day. The queue ranged
19 anywhere from seven to nine vehicles and that includes, you
20 know, basically the length from the western side as far to
21 the south as you could go up until sort of the ordering
22 window and that really occurred during the midday on a
23 weekday and then on Saturday. It was right in that range of
24 seven to nine vehicles. Some of the other operations in the
25 field which I think Mr. Hurney mentioned are some vehicles

1 get caught up on this northern side trying to get into the
2 queue to order.

3 EXAMINER: Oh. Okay.

4 MR. WORKOSKY: You know, they've come from the
5 shopping center --

6 EXAMINER: Right.

7 MR. WORKOSKY: -- and they would like to get into
8 the queue. So, it's a little awkward here because they are
9 able to do so given the configuration that's in the field.

10 EXAMINER: Is the queue flowing counter clockwise,
11 existing conditions or is it clockwise?

12 MR. WORKOSKY: It's counter clockwise. So, they
13 enter on the right hand side, move around to the left and
14 come around on the west side of the building and then out on
15 this end, on the western side.

16 EXAMINER: I see. All right.

17 MR. WORKOSKY: And then they either, if they're
18 returning west on Bel Pre road, they turn right out of this
19 driveway, and if they're going to the east, they come
20 through the shopping center, turn left and --

21 EXAMINER: To the right.

22 MR. WORKOSKY: -- go back to the east.

23 EXAMINER: All right. And can I ask you one? On
24 the rendered site plan, you're going counter clockwise.
25 Right? Correct?

1 MR. WORKOSKY: Correct.

2 EXAMINER: Okay. Where would, from the ordering
3 -- is the first ordering station in the upper northeast
4 corner? Is that the first --

5 MR. WORKOSKY: I think it=s right here.

6 EXAMINER: Oh. That=s the first. Okay.

7 MR. WORKOSKY: Then there=s another one here.

8 EXAMINER: Okay. And then how -- so you can have
9 two people ordering at one time?

10 MR. WORKOSKY: Correct.

11 EXAMINER: Okay. And where toward the south would
12 the seven to nine cars bring you?

13 MR. WORKOSKY: Down to, basically down to here.

14 EXAMINER: Okay.

15 MR. WORKOSKY: The window is at the southern most
16 end.

17 EXAMINER: Okay.

18 MR. WORKOSKY: And that allows for the stacking in
19 this lane.

20 EXAMINER: I see. All right.

21 MR. WORKOSKY: And that pretty much is how it
22 works today.

23 EXAMINER: Okay.

24 MR. RUHLEN: I was going to ask if Mr. Workosky
25 could also describe the proposed plans. So, if you could --

1 if there=s anything else to elaborate on --

2 MR. WORKOSKY: Well, the condition of existing
3 versus proposed. The basic improvements are that there=ll
4 be more stacking in here today than what=s available today.
5 That stacking, I think, is going to increase by probably two
6 to three vehicles that could store in there.

7 EXAMINER: Okay. Uh-huh.

8 MR. WORKOSKY: And traffic that=s on the western
9 side of the property that would rather not pull in, have to
10 get out of their car, go inside, they can come through the
11 new lane along the front of the building, go to their left
12 and then join the drive through lane there rather than a
13 circuitous movement. In other words, if you came out of one
14 of the other parts of the shopping center, you=d have to go
15 back out onto Bel Pre Road.

16 EXAMINER: Right.

17 MR. WORKOSKY: Or you would try and force your way
18 in.

19 EXAMINER: Okay. So, now you can do a loop using
20 the front of, the front drive aisle.

21 MR. WORKOSKY: You can use this. Correct. So --

22 EXAMINER: And where are the truck deliveries
23 going to come in there? Are they --

24 MR. WORKOSKY: They=ll be right in here.

25 EXAMINER: I know but from what direction?

1 MR. WORKOSKY: Oh. Well, they would use the drive
2 lane on Bel Pre Road. So, they could turn left or right
3 from Bel Pre here, come in, pull in front, make their
4 delivery, and come out through here.

5 EXAMINER: Yes. Although there is some conflict
6 then with the drive through aisle when they make --

7 MR. WORKOSKY: There is. But, they=re not
8 typically in the -- their delivery times typically wouldn=t
9 coincide.

10 EXAMINER: Are not the peak hours?

11 MR. WORKOSKY: Yeah. They typically wouldn=t be
12 there. I mean, there are a couple points to the plan up to
13 the north and east. This design here helps alleviate those
14 issues with people from the shopping center coming. They=ll
15 recognize, again, these are people that are familiar with
16 the shopping center. They=ll realize they can come around
17 and do this to come in.

18 EXAMINER: Okay.

19 MR. WORKOSKY: So, I think that clears up that
20 conflict point.

21 EXAMINER: Okay.

22 MR. WORKOSKY: And there are a couple of other
23 locations. First, the island, the curbed island, that=s on
24 the southeast corner.

25 EXAMINER: Yes.

1 MR. WORKOSKY: That specific design is to allow
2 traffic to go to the north but restrict them to turn right
3 and come back out to Bel Pre Road. So, this little section
4 needs to be two way because of the existing service station
5 that=s on the east. So, this island here would not allow
6 somebody to turn right and physically come back out this
7 way. That will help relieve some of the conflicts in here.

8 EXAMINER: Okay. See the green? It looks like a
9 green island?

10 MR. WORKOSKY: Right here?

11 EXAMINER: Yeah. Is that existing today or is
12 that part of the special exception area?

13 MR. WORKOSKY: I believe that exists today.

14 EXAMINER: But, that=s not part of the special
15 exception. So, you=re --

16 MR. WORKOSKY: No. There=s parking in here today.

17 EXAMINER: Okay.

18 MR. WORKOSKY: On this side.

19 EXAMINER: So, your traffic control is the cement,
20 the gray island at the bottom.

21 MR. WORKOSKY: Is this right here.

22 EXAMINER: Okay.

23 MR. WORKOSKY: Yeah. And that will restrict
24 traffic from making those movements.

25 EXAMINER: I see.

1 MR. WORKOSKY: That would, you know, would allow
2 them to come back out this way. The other point to be made
3 is that there are parking spaces along this side of the
4 building today that are for the general public=s use.

5 EXAMINER: Oh. They=re not specific to
6 McDonald=s?

7 MR. WORKOSKY: Well, they are. They are. They
8 are for McDonald=s use, I guess I should say. What happens
9 is we=re reducing that number of parking spaces you can see
10 by putting the loading in here. There are a few spaces here
11 and then some accessible spaces on the southern most side
12 here.

13 EXAMINER: Uh-huh.

14 MR. WORKOSKY: There are, I believe, eight or nine
15 spaces along this eastern side. They=re heavily used during
16 the peak hours.

17 EXAMINER: Uh-huh. Okay.

18 MR. WORKOSKY: So, what I saw in the field are,
19 you know, some conflicts for when traffic enters on Bel Pre
20 Road, they=ll wait for somebody to pull out of one of the
21 parking spaces if they=re --

22 EXAMINER: Oh.

23 MR. WORKOSKY: -- if they=d like to go in the
24 building and that can sometimes cause some queuing in here.
25 Since now we won=t have all that available parking there,

1 there won=t be any -- there=ll be less conflicts for
2 somebody to wait to back out.

3 EXAMINER: Okay.

4 MR. WORKOSKY: Because it=s that cumulative effect
5 that can cause the queue.

6 EXAMINER: Okay.

7 MR. WORKOSKY: If we don=t have that cumulative
8 effect of people backing in and out of the parking spaces,
9 they=ll drive in, realize that there=s only two spaces here
10 that are available. If they=re going to the restaurant, I
11 think they=ll come around and park on this side most likely
12 or if they=re --

13 EXAMINER: How many of the spaces on the eastern
14 side are handicapped spaces?

15 MR. WORKOSKY: I believe there are two.

16 EXAMINER: Two?

17 MR. RUHLEN: There=s just one.

18 MR. WORKOSKY: One. One handicapped space. I=m
19 sorry. And then three general parking spaces.

20 EXAMINER: Okay.

21 MR. WORKOSKY: So, there=s a reduction there over
22 today which I think it helps to improve the circulation here
23 which is, really, the primary location where traffic comes
24 in and out.

25 EXAMINER: All right. And perhaps I should have

1 asked Mr. Hurney this. Where are the spaces located in the
2 shopping center? Do you know where they are?

3 MR. WORKOSKY: I don=t know that.

4 EXAMINER: If you don=t know, it=s fine. We=ll go
5 back.

6 MR. RUHLEN: I believe I know the answer but we
7 may need to get it from him.

8 EXAMINER: Well, we=ll do that on --

9 MR. RUHLEN: We can do that at the end.

10 EXAMINER: Yes. Okay. I=m sorry to interrupt.
11 Go ahead.

12 MR. WORKOSKY: Let=s see. I guess those were the
13 main points of my description of the existing versus
14 proposed conditions.

15 EXAMINER: Okay.

16 MR. WORKOSKY: That there would be some -- I
17 believe that there=d be some improvement in how the overall
18 operation of the drive through system works given that there
19 is more stacking and that there=ll be some, I think,
20 improved efficiency in the ordering of those items.

21 EXAMINER: Okay.

22 MR. WORKOSKY: And the reduction in some of the
23 conflicts we=re likely to have here I think improves how the
24 overall circulation would work.

25 MR. RUHLEN: Okay. Great. In your professional

1 opinion, how does the proposed drive through compare with
2 the existing drive through? Anything else to add on that?

3 MR. WORKOSKY: I just believe it will be a better,
4 more efficient situation than it is there today.

5 MR. RUHLEN: In your professional opinion, will
6 the special exception improve safety or pedestrian traffic
7 issues?

8 MR. WORKOSKY: I think it will improve safety.
9 There are some, you know, lots of conflicting movements
10 there today. This helps clean up a lot of those movements.

11 MR. RUHLEN: Has anyone else reviewed the special
12 exception application in terms of impacts on
13 vehicular/pedestrian traffic?

14 MR. WORKOSKY: Park and planning staff reviewed
15 them as well. They also reviewed the site plan and the
16 queuing requirements.

17 MR. RUHLEN: And did planning board staff
18 determine whether the proposed special exception will
19 improve safety in terms of pedestrian/vehicular traffic?

20 MR. WORKOSKY: Yes. They agreed that the proposed
21 plan would improve operations and queuing and general
22 traffic operations around the site.

23 MR. RUHLEN: Okay. Is there anything else you
24 would like to add?

25 MR. WORKOSKY: I think I=ve hit all the points

1 after being in the field and seeing how all the operations
2 -- I think what is being proposed here will certain improve
3 some of those conflict points that are there today. It=s a
4 well established location. You have patrons that are
5 familiar with the access so I think they=ll become use to
6 the drive through lane very quickly.

7 MR. RUHLEN: Great. We have no further questions.

8 EXAMINER: All right. Mr. Kauffunger, I have
9 exhausted my questions this time. So, would you like to ask
10 any?

11 MR. KAUFFUNGER: I have no traffic questions.

12 EXAMINER: All right. Mr. Workosky, you can be
13 excused, and Mr. Ruhlen, do you have another witness?

14 MR. RUHLEN: No. That=s actually the end of our
15 direct. I would suggest maybe we bring Mr. Eidenberger back
16 to answer a couple of things that I think require some
17 follow-up?

18 EXAMINER: Do you have any objection, Mr.
19 Kauffunger?

20 MR. KAUFFUNGER: No.

21 EXAMINER: Okay. Come on back. And I remind you
22 you=re still under oath.

23 MR. RUHLEN: We had a couple of questions that we
24 just hit on but I believe Mr. Eidenberger can answer them.

25 EXAMINER: Great.

1 MR. RUHLEN: If we can turn back to deliveries for
2 a moment. Can you speak to the time of deliveries on the
3 property and how that works with the operations of the
4 existing restaurant?

5 MR. EIDENBERGER: So McDonald=s controls their own
6 deliveries. We generally set when they can arrive and not
7 arrive on sight, and we clearly steer them around the peak
8 hours of the restaurant so it doesn=t conflict with both the
9 drive through and customers entering inside the building.

10 EXAMINER: Okay.

11 MR. RUHLEN: Okay. Another question. Do you have
12 information regarding percentage of drive through versus
13 indoor customers?

14 MR. EIDENBERGER: Yes. We do. The existing drive
15 through and the proposed drive through would function at 60
16 percent of the customers that use the restaurant. So, 60
17 percent drive through, 40 percent inside the restaurant.

18 EXAMINER: Okay.

19 MR. RUHLEN: Okay. Great. And I know we don=t
20 have, we already discussed that we don=t have the lease
21 available but do you have any knowledge of location of
22 designated spaces on the adjacent traffic center?

23 MR. EIDENBERGER: So, I myself don=t. I would
24 speculate based on, you know, the age of the facility that
25 there=s not a specific designated location. It just says

1 that we=re allowed so many parking spaces in the greater
2 shopping center but we could get an exhibit of the lease to
3 prove that.

4 EXAMINER: Yeah. I think because you are
5 requesting a waiver that we need that in the record to
6 ensure that there is sufficient -- you need the code
7 regulations de facto even though, you know, technically,
8 they=re not all on the site. So --

9 MR. EIDENBERGER: And again, it may or may not be
10 a defined area. They just say that we=re allowed so many
11 parking spaces on the shopping center for our use.

12 EXAMINER: Okay.

13 MR. EIDENBERGER: The greater shopping center.

14 EXAMINER: We=ll see what the --

15 MR. RUHLEN: Absolutely.

16 EXAMINER: Hopefully, it will speak for itself.

17 MR. EIDENBERGER: Absolutely.

18 EXAMINER: All right.

19 MR. EIDENBERGER: Okay.

20 EXAMINER: Thank you for the clarifications.

21 MR. RUHLEN: Great. I don=t have any other direct
22 questions, redirect questions.

23 EXAMINER: Okay. And McDonald=s is willing to
24 submit either a lease for the dumpster portion as well or an
25 access easement?

1 MR. EIDENBERGER: Yeah. I believe it=s going to
2 be handled through an access easement.

3 EXAMINER: And will that include a provision for
4 maintenance of the dumpster not just access but maintenance
5 of the dumpster area?

6 MR. EIDENBERGER: I=m sure it can. I mean, even
7 if it doesn=t, we are responsible for maintenance and upkeep
8 of our trash corral because it=s our own trash corral for
9 our use. So --

10 EXAMINER: Okay. And one more question and
11 suggestion. Would it have a provision for the area
12 surrounding the masonry structure solely for maintenance
13 purposes? Would you have enough room to maintain the
14 outside of that dumpster area? Would the easement provide
15 for that? If somebody hit that brick, and you needed to go
16 right outside the dumpster area, what I would hope to see is
17 that the access easement would allow you to come on the
18 property to repair the dumpster area.

19 MR. EIDENBERGER: If I could suggest this, and I=m
20 thinking as we=re talking here.

21 EXAMINER: I know.

22 MR. EIDENBERGER: We would have --

23 EXAMINER: So am I.

24 MR. EIDENBERGER: We would have an actual easement
25 for the physical footprint of the corral but we may need a

1 separate easement for maintenance and upkeep. I don=t know
2 if we would -- we would need to work that out with the
3 landlord, I guess, basically. So --

4 EXAMINER: Okay. Because one of the things that
5 Montgomery County looks for is that you have the ability to,
6 and one reason we require the lease, is to know that you
7 have the ability to maintain and operate the special
8 exception as you=ve represented.

9 MR. EIDENBERGER: Uh-huh.

10 EXAMINER: So, they want to know that you can get
11 on there and maintain that structure if something goes wrong
12 because you=re the applicant here and FLV Del Mercado is
13 not. So, you=re bound by the requirements of the special
14 exception.

15 MR. EIDENBERGER: And, of course, we=d want to
16 maintain it, and I=m sure our landlord would want us to
17 maintain it, too. So we can --

18 EXAMINER: I understand. I=m just --

19 MR. EIDENBERGER: Sure.

20 EXAMINER: I=m just pointing it out to you having
21 been a transactional attorney at one point that that is
22 something, you know, I know you=re dealing with a fairly
23 sophisticated or fairly large user but that is something you
24 may want to provide for.

25 MR. EIDENBERGER: Sure.

1 MR. RUHLEN: And not wanting to speak to it too
2 much since I=m not working on that portion but I=m sure
3 McDonald=s would be looking at whether they can provide for
4 that in the easement itself rather than a separate document.

5 MR. EIDENBERGER: Correct.

6 EXAMINER: Right.

7 MR. EIDENBERGER: Correct.

8 EXAMINER: Okay. Fine. And is that the last of
9 your case-in-chief witnesses?

10 MR. RUHLEN: Yes.

11 EXAMINER: Okay. Mr. Kauffunger.

12 MR. BRONSTEIN: Ms. Robeson?

13 EXAMINER: Oh. I=m sorry.

14 MR. BRONSTEIN Could we have a short break for a
15 consultation and restroom use?

16 EXAMINER: Well, you can consult here. I=ll give
17 you 10 minutes --

18 MR. BRONSTEIN: Okay.

19 EXAMINER: -- and then you don=t have to consult
20 in the restroom. Okay?

21 MR. BRONSTEIN You=re very kind.

22 EXAMINER: So, we=ll go off the record for 10
23 minutes. All right?

24 MR. BRONSTEIN Okay.

25 EXAMINER: Thank you.

1 (Off the Record)

2 (On the Record)

3 EXAMINER: Okay. We'll go back on the record.

4 Mr. Kauffunger, this is your time.

5 MR. KAUFFUNGER: Yes. Again, for the record, my
6 name is Richard Kauffunger. I live at 2309 East Gate Drive,
7 Silver Spring, Maryland. That is in the area of the Layhill
8 Village Civic Association. Although, over the years, I've
9 been most associated with the Layhill Alliance.

10 EXAMINER: Okay.

11 MR. KAUFFUNGER: I've been deeply involved in land
12 use issues as a citizen advocate and defending what I just
13 consider the public interest for 25 plus years. I guess,
14 really, the thing that really shows my background, because I
15 have no formal training is the fact that I have actively
16 participated in as a party of record in 19 zoning cases, and
17 I think it's like 35 special exceptions over the years. I
18 also served --

19 EXAMINER: Well, you don't look too battle
20 scarred.

21 MR. KAUFFUNGER: I got to watch my mouth. And,
22 oh. I also served four years on the citizen advisory
23 committee for the Aspen Hill master plan which entailed
24 monthly meetings. It was one hell of a lot of meetings and
25 my claim to fame for a number of years was, it was the

1 longest. I was involved in a case that was one of the
2 longest before the Board of Appeals itself before they went
3 to using the hearing examiner more fully. We went, I think
4 it was 24 sessions.

5 EXAMINER: I hate when that happens.

6 MR. KAUFFUNGER: Yes. I do, too.

7 EXAMINER: My longest was 27.

8 MR. KAUFFUNGER: At any rate, the issue here for
9 the citizens is the parking waiver.

10 EXAMINER: Uh-huh.

11 MR. KAUFFUNGER: And it=s probably best that I
12 just go up and speak to the exhibits.

13 EXAMINER: That=s fine. Just for the record, if
14 you could say the number of the exhibit you=re referring to.

15 MR. KAUFFUNGER: I will do that. Yes. Is there a
16 microphone?

17 EXAMINER: No. The mic will pick you up.

18 MR. KAUFFUNGER: Oh. It will pick me up.

19 EXAMINER: Yes.

20 MR. KAUFFUNGER: Okay.

21 EXAMINER: I believe that=s Exhibit 30.

22 MR. KAUFFUNGER: Yes.

23 EXAMINER: The photos of the existing conditions.

24 MR. KAUFFUNGER: Yes. It=s Exhibit 30. I=ll

25 first just go to the aerial, the two aerial views. I was

1 involved in the special exception modification on adding the
2 drive through window.

3 EXAMINER: Uh-huh.

4 MR. KAUFFUNGER: And, in those days Plaza Del
5 Mercado I used to call the kamikaze rocket --

6 EXAMINER: Uh-huh.

7 MR. KAUFFUNGER: -- because, if you were on Bel
8 Pre Road, cars came at you in every direction. That was
9 going to be more greatly complicated with the drive through
10 window. There were two things I was successful in getting.
11 One was a dedicated left only here because it used to be
12 every entrance and exit was right and left also. The other
13 thing was getting the traffic light at the intersection
14 which was one hell of a battle because the owner of Plaza
15 Del Mercado at that time, a Mr. Ziegler, didn=t, he only
16 wanted the county to pay for it. He didn=t even want
17 McDonald=s to pay for it or the retailers association. So,
18 there=s been very, very long battles. The store over here
19 has changed hands several times. It started off when I
20 moved here, I=ve lived in the area 33 years. This was
21 High=s, and then there=s been various businesses in there.
22 Even before you had the drive through window there, this
23 area in here was always a big, big problem. It was big
24 enough that the High=s kept making complaints. I think it
25 was Mr. Cohen that used to own McDonald=s or was a

1 franchisee here. They had a wire that went from the two
2 buildings so that when things really got screwed up, you had
3 a guy that handled traffic from McDonald=s and he would go
4 out and try to unscramble the traffic. This is before the
5 drive through window.

6 EXAMINER: Uh-huh.

7 MR. KAUFFUNGER: So, there=s always been issues.
8 By the way, I didn=t get involved in this until this past
9 week.

10 EXAMINER: Uh-huh.

11 MR. KAUFFUNGER: Okay? When the president of the
12 civic association talked to me and I agreed to, you know,
13 just to check into it and bring up some of the concerns of
14 the past. One of the things I did on Friday is I went into
15 the Starbuck=s and I asked, I talked with the assistant
16 manager there the problems that they have. They=re biggest
17 complaint is McDonald=s people, customers, using their
18 parking spaces.

19 EXAMINER: Uh-huh.

20 MR. KAUFFUNGER: Particularly, the handicapped
21 spaces.

22 EXAMINER: I can=t see where your finger is
23 pointing --

24 MR. KAUFFUNGER: Oh. Oh. I=m sorry. Okay.

25 EXAMINER: -- because your fist was in the way.

1 MR. KAUFFUNGER: Okay. Okay. In front of the
2 Starbucks, close to the entrance way, are two handicapped
3 parking spaces.

4 EXAMINER: Okay.

5 MR. KAUFFUNGER: McDonald=s has one. The
6 complaint of the people at Starbucks is that McDonald=s,
7 okay, customers often use it. I also went into the Shell
8 gas station. They also said they had a handicap space that
9 they say is often used. Shell has three spaces here.
10 Fairly often the McDonald=s customers are using those
11 spaces.

12 EXAMINER: Wait. The handicapped spaces or just
13 the parking spaces?

14 MR. KAUFFUNGER: All together, there=s three
15 spaces there. One handicapped here, two here. According to
16 the assistant manager here and I actually didn=t ask him
17 what he was but the fellow in the Shell station says that it
18 was a problem in here. But, that=s just a reflection of the
19 problem that they had for years and years and years. Okay?
20 Obviously, the new plan which is laid out on Exhibit,
21 wherever it is. I don=t see it on there.

22 EXAMINER: Well, it=s on the rendered site plan
23 there.

24 MR. KAUFFUNGER: Yeah. Oh, yes. I=m sorry.

25 EXAMINER: Which is?

1 MR. KAUFFUNGER: 29.

2 EXAMINER: Okay.

3 MR. KAUFFUNGER: Okay. There=s no question that
4 this is much better. It solves a whole bunch of the
5 remaining problems that you have there. There=s problems.
6 Right now, deliveries come in the back when they make
7 deliveries. I often enter the shopping center through the
8 eastern most entrance to the whole shopping center. If I
9 was going to go to CVS, sometimes I couldn=t use the road
10 here.

11 EXAMINER: Uh-huh.

12 MR. KAUFFUNGER: A truck is there unloading.

13 EXAMINER: Okay.

14 MR. KAUFFUNGER: Okay? So, there=s been really
15 many complications. Obviously, in the mornings or peak
16 hours right now the parking that=s angled in people have a
17 problem backing up and getting out but they=ve actually
18 pointed that out here. There are conflicts galore. So, the
19 improvements that they=re making are great. However, for
20 every special exception that needed a modification over the
21 years, there=s always been an issue about the number of
22 parking spaces in the entire Plaza Del Mercado. When Taco
23 Bell moved into where the Starbuck=s was --

24 EXAMINER: Uh-huh.

25 MR. KAUFFUNGER: -- or is, the parking was such a

1 big issue that they ended up having to clean out a whole
2 area behind where they had a trash area behind the Shell
3 station so that they could add a couple of additional
4 parking spaces just so they met the requirements of the
5 entire shopping center. The other factor that=s an issue
6 is, and I=ll go back to an area of the entire shopping
7 center here on Exhibit 30, and that is there=s parking
8 behind the buildings up here that the shopping center counts
9 to meet their total --

10 EXAMINER: When you say here, that=s the photo on
11 the upper left hand side?

12 MR. KAUFFUNGER: Yes. Yes. And it=s the space
13 behind -- you could say the Plaza Del Mercado is in an L-
14 shaped design.

15 EXAMINER: Uh-huh.

16 MR. KAUFFUNGER: At the apex of the two sides --

17 EXAMINER: Yeah.

18 MR. KAUFFUNGER: -- is a little walkway through
19 there and parking spaces back out here.

20 EXAMINER: Just to the rear of the northern --

21 MR. KAUFFUNGER: To the rear, yes.

22 EXAMINER: -- side of the L.

23 MR. KAUFFUNGER: Yes.

24 EXAMINER: Yeah.

25 MR. KAUFFUNGER: Okay? Those are virtually never

1 used and even on this aerial they=re not used. It would be
2 nice if you could even get the help in the stores to go back
3 there. But the reason for, that it=s so seldom used is for
4 all practical purposes when you come in and out of there,
5 this corner, that used to be a Giants. So this would be the
6 northeast corner of the block and what was the anchor store
7 that really effectively is only a one-way or a single lane
8 road. So, you can go both ways but you can=t go around the
9 corner, you know, two at a time. If you come out onto Bel
10 Pre Road from behind all the stores, you can only go into
11 the shopping center in front of the Advance Auto and then
12 directly out because there=s an island that was put in there
13 to stop the cut through=s. By the way, that was done, that
14 blockage was put in to accommodate McDonald=s convergent.
15 It was because cars used to come across --

16 EXAMINER: Convergent to the drive through, you
17 mean?

18 MR. KAUFFUNGER: Yeah. When they converted to the
19 drive through, you had cars that used to come across here
20 and try to break through and go out.

21 EXAMINER: I see.

22 MR. KAUFFUNGER: So, they put a bigger island in
23 and they put an island in the middle. But, the end result
24 is if you park back here, you can only go out onto Bel Pre
25 Road.

1 EXAMINER: Okay.

2 MR. KAUFFUNGER: You can=t go into the shopping
3 center.

4 EXAMINER: All right.

5 MR. KAUFFUNGER: So, we have a situation that
6 exists where parking for the entire shopping center is
7 marginal and was made a big issue in the past by the staff
8 at park and planning where they were looking for the spaces,
9 you know, an additional space here or there. I=m going to
10 just raise it because it=s always been an issue, and it was
11 an issue at the time of the master plan. These two shopping
12 centers should have been tied together from the very
13 beginning. So, one of the things that=s of discussion
14 whenever there=s a change requested in Plaza Del Mercado is
15 to see if we can make it a requirement of approval that they
16 finally put in some kind of a tie in between these two
17 shopping centers. These were discussions during the master
18 plan time. It was a very, very big issue.

19 EXAMINER: You=re pointing to the upper left hand
20 corner.

21 MR. KAUFFUNGER: Okay. Okay. When I=m showing --

22 EXAMINER: That=s a strip shopping center that
23 faces Bel Pre or Layhill?

24 MR. KAUFFUNGER: Yes. This is the Layhill
25 Shopping Center. Okay? Here.

1 EXAMINER: Yeah.

2 MR. KAUFFUNGER: And this is Plaza Del Mercado.

3 EXAMINER: Okay. To the west.

4 MR. KAUFFUNGER: So, on the very east -- yes.

5 EXAMINER: Okay.

6 MR. KAUFFUNGER: And Layhill Shopping Center
7 actually has access on the Layhill Road, and it has three
8 entrances and exits onto Bel Pre Road which is just what
9 makes it so complicated. It still would be great if, at
10 this point, they execute on the idea of tying those two
11 shopping centers together. But, doing a tie in right up
12 here near the, I guess you=d call it the southeast corner of
13 what was the anchor store for Plaza Del Mercado. But, the
14 real concern to many of us is that Giant has now closed.
15 There was a proposal to tear it down, put in a two floor
16 store, and again, because they were going to have more, you
17 know, floor space, there was a big, big issue, again, on
18 parking and how do we make this whole thing work. Our
19 concern in the area is we are now without a food store and
20 if, you know, Giant clearly is not interested in going back
21 there but it would be great if we could get some other kind
22 of a store like a Magruder=s or something like that. But,
23 we don=t want to end up not being able to get that kind of
24 an anchor because the critical number of spaces ends up
25 being used for trash area. What is that? Okay. Three

1 spaces are lost there from the trash and then you have the
2 waiver for true parking spaces. So, our opportunity to get
3 a new food store in the Plaza Del Mercado is made very
4 questionable because of the loss of parking spaces.

5 EXAMINER: It=s my understanding that this, oh.
6 Okay. I see. How many spaces are we losing here, though?
7 We=re only losing, it seems to me on the special exception
8 site, you=re only losing six or seven spaces.

9 MR. KAUFFUNGER: Yes.

10 EXAMINER: I could be wrong.

11 MR. KAUFFUNGER: Yes. Plus, you=re losing those
12 plus the three, four in the trash.

13 EXAMINER: On lot 2?

14 MR. KAUFFUNGER: Yes. Well, altogether to meet
15 their requirements, okay? You had parking spaces that ran
16 all the way up the side of the building.

17 EXAMINER: Right. And I=m assuming there=s a net
18 loss but I=m not sure.

19 MR. KAUFFUNGER: Well, Chris help me add. One,
20 two, three, four, five, six, seven, eight.

21 EXAMINER: Okay. Okay. Please don=t approach.
22 This is a waiver but it=s from a pre-existing condition.
23 All right? So, I don=t know. Did McDonald=s meet the
24 number of parking spaces that were there? Meet the required
25 number of parking spaces on site prior to this?

1 MR. RUHLEN: In connection with the previous
2 special exception rules?

3 EXAMINER: Yes.

4 MR. RUHLEN: We can provide some more information
5 but my understanding is only through the combination of on
6 and off site.

7 EXAMINER: That was my understanding from the
8 staff report as well that this isn't -- well, there may be a
9 few spaces net loss but this is primarily a pre-existing
10 condition.

11 MR. KAUFFUNGER: What you=re losing is what?
12 Eight spaces here alongside the currently --

13 EXAMINER: The eastern side.

14 MR. KAUFFUNGER: On the eastern side --

15 EXAMINER: Okay.

16 MR. KAUFFUNGER: -- there were eight spaces.

17 EXAMINER: Okay. I understand.

18 MR. KAUFFUNGER: Now, you have three.

19 EXAMINER: Four.

20 MR. KAUFFUNGER: No. It=s three. Oh. Four.

21 Wait there=s one of these fences. Okay. So, is it four?

22 EXAMINER: It=s hard for me to see. Let me get
23 the --

24 MR. KAUFFUNGER: No. Yeah. Because this is the
25 handicapped. So, that=s not a space there. That=s where

1 you get in and out. That=s the extra space.

2 EXAMINER: Okay.

3 MR. KAUFFUNGER: Two spaces is one, two, three.
4 Okay? You had eight so you lose five there plus with the
5 addition, and again, I=m looking at Exhibit 29. With the
6 addition of the trash area, you lose three spaces in the
7 parking lot.

8 EXAMINER: Okay.

9 MR. KAUFFUNGER: Okay? The net is that in Plaza
10 Del Mercado, this is looking at it in a very simplistic way,
11 you end up losing eight spaces but in a place they couldn=t
12 make the numbers work before. It is always a big issue
13 about whether or not you meet the county requirements for
14 the shopping center as a whole or the rest of the shopping
15 center and we don=t want, the community doesn=t want, to
16 lose out with having a local food store because it doesn=t
17 have adequate parking. The other thing is, what is
18 happening today, and you could easily see how it could
19 become a bigger issue is the loss of these spaces to
20 Starbucks. Starbucks= people, and according to them, are
21 often parking, you know, go into currently the anchor but,
22 you know, towards the anchor store site. So, that=s the
23 only thing that=s really available to them, and it becomes
24 much more obvious when you look at the aerial that=s part of
25 Exhibit 30 of the entire shopping center.

1 EXAMINER: The upper right hand photograph.

2 MR. KAUFFUNGER: Yes. The upper right hand
3 corner. But, if the Starbucks= people can=t park here then
4 they=re parking up in here, and that=s clearly what you=re
5 seeing.

6 EXAMINER: You=re saying behind the gas station
7 and not Starbucks.

8 MR. KAUFFUNGER: Behind the gas station. Well,
9 the gas station is in here. The Starbucks runs across the
10 back of it.

11 EXAMINER: Okay.

12 MR. KAUFFUNGER: And to point out, the Starbucks
13 with a Taco Bell, the parking was so tight that they ended
14 up removing the trash area for the gas station so they could
15 get another space or two in there just so they could meet
16 the requirements for the entire shopping center. So, it=s
17 always been very, very tight and depending on who the
18 tenants are, you can have big problems. When they had a Spa
19 Lady or something like that. That was definitely a new one.
20 When it was the hours for the gals to go and exercise, it
21 was tough parking. So, it=s a very real problem, and I
22 don=t want us just to go off over that at this point because
23 it can have significant impacts for the people in the entire
24 area and shopping to go through what we all moan about
25 today. You can get milk at the 7-Eleven but there=s lots of

1 other things that you=d like to be able to just shoot out
2 and get that=s no longer viable.

3 EXAMINER: So, are you saying you would prefer the
4 existing conditions to remain?

5 MR. KAUFFUNGER: What I would really like them to
6 do is work through -- I mean, I didn=t know what they were
7 planning. I couldn=t get anybody that kept the drawings.
8 Okay? So, I wasn=t able to try and figure out what to do.
9 Okay? So, I can=t say that I have a solution but I=d like
10 them to keep on trying. Okay?

11 EXAMINER: Okay.

12 MR. KAUFFUNGER: And it may be that their eating
13 area has been -- I mean, you know, if the parking is most
14 directly tied to eat in, okay, maybe if they reduce that. I
15 can=t give a solution. I just would like to see more work
16 done to figure out what could be done.

17 EXAMINER: Okay.

18 MR. KAUFFUNGER: Because I=ve laid out some of
19 this. It=s, you know, we live in a world of trade offs.
20 But, it=s a great concern to the public interests in the
21 area that we protect the anchor site for a food store.

22 EXAMINER: Okay.

23 MR. KAUFFUNGER: And that store has been -- what
24 has it been vacant six months?

25 MR. RUHLEN: Something like that.

1 MR. KAUFFUNGER: Yeah.

2 EXAMINER: All right.

3 MR. KAUFFUNGER: It only recently went out.

4 EXAMINER: All right.

5 MR. KAUFFUNGER: And that=s my issue.

6 EXAMINER: All right.

7 MR. KAUFFUNGER: Thank you.

8 EXAMINER: Mr. Ruhlen, any questions?

9 MR. RUHLEN: Yeah. I have a couple questions if
10 you don=t mind. Thank you for your testimony.

11 EXAMINER: No. If you could go back to your seat.

12 MR. KAUFFUNGER: Okay. I was thinking I=d have to
13 point it out again.

14 MR. RUHLEN: Sure. We can point across the room
15 if we need to do this.

16 MR. KAUFFUNGER: Okay. I can=t see that far.

17 MR. RUHLEN: Just to clarify. Could I ask you a
18 quick question? Are you speaking today as an individual?

19 MR. KAUFFUNGER: Officially, I am speaking as an
20 individual and a user of the shopping centers in that area.

21 MR. RUHLEN: Okay. We were using the exhibits a
22 lot and for the record, Exhibit 30, I believe, has several
23 site photos including, it looks like three different aerial
24 photos.

25 MR. KAUFFUNGER: Yes.

1 MR. RUHLEN: You were using those in your
2 comments.

3 MR. KAUFFUNGER: Yes.

4 MR. RUHLEN: Are those, in your opinion, accurate
5 representations of the parking situation on the property,
6 the McDonald=s and the Plaza Del Mercado?

7 MR. KAUFFUNGER: Of the parking? I=m not sure
8 what you=re --

9 MR. RUHLEN: Those are true site photographs of
10 existing conditions.

11 MR. KAUFFUNGER: They are true site photographs.
12 I don=t know what time of the day they were taken.

13 MR. RUHLEN: Okay. And you also testified that
14 you agree that improvements are being made in connection
15 with the special exception to deal with certain conditions
16 that have proven to be undesirable or perhaps even --

17 MR. KAUFFUNGER: Without question.

18 MR. RUHLEN: Okay.

19 MR. KAUFFUNGER: It=s a positive step forward from
20 20 years ago.

21 MR. RUHLEN: And you also suggested that with
22 regard to parking -- did I understand correctly perhaps we
23 look at, McDonald=s look at, reducing patron area in order
24 to reduce parking requirements. Is that what your
25 suggestion --

1 MR. KAUFFUNGER: That was just off the top of my
2 head.

3 MR. RUHLEN: Okay.

4 MR. KAUFFUNGER: You know, I --

5 MR. RUHLEN: Okay. I have no further questions
6 right now.

7 EXAMINER: All right.

8 MR. RUHLEN: But, I would like to recall, if we
9 may, if we could bring --

10 EXAMINER: Well, we'll go into rebuttal.

11 MR. RUHLEN: Okay.

12 EXAMINER: Okay. Anyone else that would like to
13 testify in opposition or whatever? All right. Moving now
14 to rebuttal. Mr. Ruhlen, do you want to call your first
15 rebuttal witness?

16 MR. RUHLEN: Yes. I think it would be useful if
17 Mr. Hurney, if we could call Mr. Hurney back.

18 EXAMINER: Okay.

19 MR. RUHLEN: Although, he probably shouldn't get
20 too comfortable in his chair because he may have to stand up
21 and go to the exhibits.

22 EXAMINER: Mr. Hurney, you're still under oath.

23 MR. HURNEY: Okay.

24 MR. RUHLEN: Okay. We went through a string of
25 questions on parking requirements but I would like to

1 revisit some of those questions and maybe see if we can
2 clarify some points for the record. Mr. Hurney, you
3 testified previously with your familiarity with the
4 requirements of the Montgomery County Zoning Ordinance and
5 the requirements of the C1 zone?

6 MR. HURNEY: Yes. I did.

7 MR. RUHLEN: Okay. You also testified as to
8 parking requirements for the existing uses and the proposed
9 use. Could you please describe the code requirements for
10 the existing parking on site and what those requirements are
11 based off?

12 MR. HURNEY: The requirements for the McDonald=s
13 restaurant in the C1 zone is based on the patron area of the
14 site. It=s 25 per 1,000 square feet of patron area.

15 MR. RUHLEN: Okay. Do you have information
16 regarding the existing patron area in the current
17 restaurant?

18 MR. HURNEY: Yes. I do.

19 MR. RUHLEN: And what is that patron area?

20 MR. HURNEY: I=ll have to get the number out of
21 here. Eighteen hundred and sixty-four square feet.

22 MR. RUHLEN: Okay.

23 MR. HURNEY: Is for the existing.

24 MR. RUHLEN: And what amount, under the code,
25 speaking in terms of the code requirements, what does that

1 translate to in terms of number of parking spaces?

2 MR. HURNEY: The required number of parking spaces
3 under the, for the current, would be 47 required spaces.

4 MR. RUHLEN: Okay. Forty-seven required spaces by
5 code, and how many spaces are currently provided on site?

6 MR. HURNEY: Eighteen are provided on site.

7 MR. RUHLEN: And off site?

8 MR. HURNEY: There=s 35 designated for from the
9 Plaza del Mercado Shopping Center which totals 53 spaces.

10 MR. RUHLEN: Do you have information regarding
11 whether there is currently an ADA accessible parking space
12 on site?

13 MR. HURNEY: Yes. There is.

14 MR. RUHLEN: And where is the location of that ADA
15 parking space?

16 MR. HURNEY: It=s on the east side of the building
17 further up towards the ordering station towards the north of
18 the building.

19 MR. RUHLEN: Okay.

20 MR. HURNEY: Basically towards the end up here.

21 MR. RUHLEN: Okay. So, how many parking spaces,
22 then, are currently provided on the eastern side of the
23 restaurant including the ADA space?

24 MR. HURNEY: Really, there=s eight or nine on the
25 existing. There=s one space that I think people use that=s

1 really not a parking space.

2 MR. RUHLEN: Okay. With regard to the proposed
3 restaurant, what is the patron area for the proposed
4 restaurant?

5 MR. HURNEY: The patron area for the proposed
6 restaurant is 1149 square feet.

7 MR. RUHLEN: Can I ask you one other question? If
8 we could return, quickly, to existing. We talked about
9 patron area. Did you review outdoor seating as well? Is
10 there outdoor seating on the existing use?

11 MR. HURNEY: Yes. Yes. There is.

12 MR. RUHLEN: And I don=t believe we addressed that
13 in the previous question but does the 47 required parking
14 spaces include the requirements, including that outdoor
15 area?

16 MR. HURNEY: No. That was for the patron area.

17 MR. RUHLEN: Okay. Just interior patron area
18 only.

19 MR. HURNEY: Yeah.

20 EXAMINER: I didn=t hear the zoning ordinance
21 requirement. Is it by square footage of patron area or is
22 it number of seats?

23 MR. HURNEY: Square footage of patron area.

24 EXAMINER: Okay. And what is the formula?

25 MR. HURNEY: Twenty-five per 1,000 square feet of

1 gross patron area.

2 EXAMINER: Okay. So, the patron area without the
3 playground, and I guess they=re not counting the playground
4 because it=s not enclosed? Is that what it is?

5 MR. HURNEY: Correct.

6 EXAMINER: Okay. So, the existing amount of
7 playground area was how much? I mean, the existing amount
8 of patron area was how much?

9 MR. HURNEY: The existing is 1,864, and the
10 proposed is 1,149.

11 EXAMINER: Okay. But, you=re also eliminating
12 about what square footage in the playground area?

13 MR. HURNEY: Well --

14 EXAMINER: Exclusive of the equipment.

15 MR. RUHLEN: If I could clarify? Are there seats
16 outside?

17 MR. HURNEY: No.

18 MR. RUHLEN: Okay. There=s no patron --

19 EXAMINER: Oh. I thought someone said there were
20 seats outside.

21 MR. HURNEY: Right. There=s some outside. Right.

22 MR. RUHLEN: Okay. But --

23 EXAMINER: Do you happen to know how many?

24 MR. HURNEY: Eight.

25 MR. RUHLEN: Eight.

1 MR. HURNEY: It=s a round table.

2 EXAMINER: Okay. Wait. Wait.

3 MR. BRONSTEIN: I think there are 10.

4 EXAMINER: Wait. Okay. You can=t. I need
5 somebody under oath to testify. So, do you want to take a
6 two minute break and see if you can consult and come up with
7 that testimony or can you find it somewhere?

8 MR. RUHLEN: Do you need a break or are you ready?

9 MR. HURNEY: Yeah. I need a break. I need to
10 take a look at the photos.

11 MR. RUHLEN: Just to make sure we have the
12 information on the CD.

13 EXAMINER: Okay. It can just be a two minute
14 break.

15 MR. RUHLEN: Sure.

16 MR. HURNEY: That=d be great.

17 MR. KAUFFUNGER: Do you want to swear me in
18 retroactively?

19 EXAMINER: Oh. I did not swear you in? That was
20 my bad. While they=re doing that, why absolutely certainly.
21 Please raise your right hand. Do you solemnly affirm under
22 penalties of perjury that the statements you have already
23 made were the truth, the whole truth, and nothing but the
24 truth, and any further statements you=re about to make are
25 the truth, the whole truth, and nothing but the truth?

1 MR. KAUFFUNGER: I do.

2 EXAMINER: Thank you, Mr. Kauffunger. I would not
3 have you sit here and not under oath. All right.

4 MR. RUHLEN: I believe we have it straight.

5 EXAMINER: You have it straight. That=s good.
6 Okay. Mr. Hurney.

7 MR. HURNEY: Okay. There are actually 10 seats
8 outside of the -- in the front of the building next to the
9 playground area.

10 EXAMINER: Okay. So, you had 1,149 square feet of
11 enclosed area, the patron area.

12 MR. RUHLEN: Proposed.

13 MR. HURNEY: For proposed.

14 EXAMINER: I mean 1,864.

15 MR. HURNEY: Correct.

16 EXAMINER: 1,864 enclosed patron area existing
17 plus the 10 seats.

18 MR. RUHLEN: Were the 10 seats included in the
19 calculation of the parking requirements based on --

20 MR. HURNEY: No.

21 MR. RUHLEN: No. Okay.

22 EXAMINER: Mister -- yes. Okay. And now you have
23 1,149 square feet of patron area without any seating.

24 MR. HURNEY: Well, the seating inside of the
25 building is 1,149.

1 EXAMINER: I mean without any seating outside.

2 MR. HURNEY: Correct. Correct.

3 MR. RUHLEN: And what are the parking requirements
4 under the zoning ordinance based on the 1,149?

5 MR. HURNEY: On the 1,149, again, based on the 25
6 per 1,000 square feet of patron area, 29 spaces are
7 required. Thirteen of those are provided on the site and
8 again, we still have the 35 that are in the Plaza Del
9 Mercado shopping area which gives us a total of 48 spaces
10 provided and 29 are required.

11 MR. RUHLEN: So, 48 parking spaces will be
12 provided for the use following implementation of this
13 special exception?

14 MR. HURNEY: Correct.

15 MR. RUHLEN: And 29 parking spaces would be
16 required?

17 MR. HURNEY: Correct.

18 MR. RUHLEN: Versus 47 parking spaces being
19 required today?

20 MR. HURNEY: Correct.

21 MR. RUHLEN: Okay.

22 EXAMINER: I'm sorry. One more thing. How many
23 were on site under existing conditions?

24 MR. HURNEY: Eighteen.

25 MR. RUHLEN: Yes. And I wanted to ask --

1 EXAMINER: And now it=s 13?

2 MR. HURNEY: Now it=s 13.

3 EXAMINER: Okay.

4 MR. RUHLEN: And I was going to ask if Mr. Hurney
5 could show us where those spaces are being proposed?

6 EXAMINER: Okay.

7 MR. HURNEY: Previously under the existing
8 condition, the parking spaces were totally along the east
9 side of the building.

10 EXAMINER: Right.

11 MR. HURNEY: And at the present time, we have
12 three spaces indicated here of those. We eliminated five
13 spaces that were up in this area which were also the spaces
14 that were conflicting with the drive through movements.

15 EXAMINER: And the truck deliveries.

16 MR. HURNEY: And the truck deliveries.

17 EXAMINER: Yeah.

18 MR. RUHLEN: Okay. And again, Mr. Hurney, you
19 previously testified that you visited the site, the special
20 exception site in preparation of -- with the special
21 exception application materials. Exhibit 30, the aerial
22 photographs. Do you believe those photographs to accurately
23 depict the site?

24 MR. HURNEY: Yes. I do.

25 MR. RUHLEN: Did you observe parking conditions

1 on the site when you made your site visits?

2 MR. HURNEY: Yes. I was out there numerous times.
3 I know three specifically plus other times when I've driven
4 by there myself, and I think it is shown on the photographs
5 not only that I took but also the aerials. There is always
6 a number of empty spaces that were available in the shopping
7 center.

8 EXAMINER: Okay.

9 MR. RUHLEN: When did you visit the site? Do you
10 recall the last time or the --

11 MR. HURNEY: Well, the last time was just a couple
12 of months ago. But, I went out there as early as,
13 basically, about 18 months ago when we first started on
14 this. Some of those photos that are taken with the snow was
15 taken last winter. I believe it was in December of, it
16 would have been >10, 2010.

17 MR. RUHLEN: When you have been out on site, in
18 your belief, was the grocery store still occupied?

19 MR. HURNEY: Yes. It was. When we first took
20 those photographs, it was occupied.

21 MR. RUHLEN: And when you observed the site
22 conditions you were describing and the availability of
23 parking, the grocery store was in operation on the property?

24 MR. HURNEY: Yes. Yes. It was.

25 MR. RUHLEN: Okay. I guess I wanted to ask a

1 couple other questions quickly just to clarify. Again, just
2 to clarify, what is the area of this special exception
3 application, the area subject to the special exception
4 application?

5 MR. HURNEY: The area is --

6 MR. RUHLEN: I mean, let me clarify again.

7 MR. HURNEY: Oh.

8 MR. RUHLEN: In terms of the lots, which lots are
9 involved in the subject application?

10 MR. HURNEY: We have lot 3 is and just the area
11 for the dumpster which is adjacent to on lot 2 which I
12 believe is 434 square feet.

13 MR. RUHLEN: Okay. Are you aware of, this applies
14 to the adjacent property, but are you aware of any site plan
15 applications or any other development approvals for the
16 adjacent lot that is not subject to today=s?

17 MR. HURNEY: There was a previous site plan
18 submitted for the Plaza del Mercado Shopping Center for the
19 renovation of the Giant food store at the time.

20 MR. RUHLEN: Do you know the approximate time it
21 was --

22 MR. HURNEY: It was approximately 2005 to 2006
23 time frame.

24 MR. RUHLEN: And did you review any park and
25 planning staff reports and materials in connection with that

1 process?

2 MR. HURNEY: Yes. I did. I reviewed the staff
3 reports for that, and staff approved the application for the
4 renovations to the shopping center parking lot.

5 MR. RUHLEN: Okay. Okay. Great. And you recall
6 that was a site plan or?

7 MR. HURNEY: Yes. It was. It was a site plan
8 submittal.

9 MR. RUHLEN: Okay. Okay. Great. No further
10 questions for Mr. Hurney.

11 EXAMINER: All right. Any questions solely based
12 on Mr. Ruhlen=s questions?

13 MR. KAUFFUNGER: Yes. I will ask a queuestion.
14 In reviewing your testimony just now, it would be correct to
15 say that there will be a need to take eight additional
16 spaces out of the Plaza del Mercado Shopping Center parking
17 because of changes on site and those changes being five from
18 a loss of spaces on the east side of the store and three
19 spaces for the trash area.

20 MR. HURNEY: Well, I mean, the thing is is that in
21 looking at it as the county looked at it if the Plaza Del
22 Mercado goes in and they can make an agreement with
23 McDonald=s to use just what McDonald=s uses, you know, in
24 the 2005 site plan application, that=s what they did. They
25 put in the requirements for all the uses on the site

1 including the shopping --

2 EXAMINER: Who put in the requirements? The
3 shopping center?

4 MR. HURNEY: No. The site plan application and
5 Federal Realty submitted --

6 EXAMINER: Oh. I see.

7 MR. HURNEY: -- back in 2005 --

8 EXAMINER: Park and planning. Yeah.

9 MR. HURNEY: -- and park and planning looking at
10 the total parking lot, used all the calculations including
11 the shopping center, the McDonald=s, the Shell service
12 station and the Starbucks, which are on separate parcels --

13 EXAMINER: Right.

14 MR. HURNEY: -- did the total calculation --

15 EXAMINER: I see.

16 MR. HURNEY: -- for all those uses based on the
17 square footage that was out there and came up with the
18 requirements for the shopping center because they
19 acknowledged the fact that it was an integrated process.
20 So, if you went back in and did a re-application or follow
21 up with that, there=s actually a net of 15 spaces because
22 we=ve dropped down from 47 to 29.

23 EXAMINER: Yeah. I was just looking at that.

24 MR. HURNEY: Which is 18. We are putting in the
25 dumpster which takes up three spaces and everything else.

1 So, even if you take away those three spaces, Federal Realty
2 has a net of 15 that they could allocate to the, any re-
3 development they had assuming they can --

4 EXAMINER: Right.

5 MR. HUNREY: -- the lease, in the legal terms with
6 McDonald=s.

7 EXAMINER: Right.

8 MR. HURNEY: Because they do have a commitment of
9 35.

10 EXAMINER: Right.

11 MR. HURNEY: But, if park and planning looks at it
12 the same way they looked at it in 2005, they=re going to see
13 a net increase of 15 spaces.

14 EXAMINER: Right.

15 MR. HURNEY: Not a reduction of eight.

16 EXAMINER: Eight spaces.

17 EXAMINER: Eight spaces. Right. They=re going to
18 see a net increase of 15 using the same methodology they did
19 before.

20 EXAMINER: Does, okay. All right. Percentage
21 wise, what was the number of required spaces existing?

22 MR. HURNEY: Required for the existing condition
23 are 47 because the patron area was a lot larger in the older
24 building than it is at the present time, and a lot of that
25 has to do with the functionality of the seating arrangement.

1 EXAMINER: Right. Okay. All right. Mr. Ruhlen,
2 anything further.

3 MR. RUHLEN: I=d also like to call Mr. Workosky
4 back if that=s fine?

5 EXAMINER: Fine. Mr. Workosky, you=re still under
6 oath.

7 MR. WORKOSKY: Yes.

8 MR. RUHLEN: Mr. Workosky, I guess I would ask you
9 again, like Mr. Hurney, Exhibit 30, the aerial photos. We
10 have three examples.

11 EXAMINER: Those are the three photos on the top
12 of Exhibit 30.

13 MR. RUHLEN: Right. In your opinion, do those
14 photos accurately represent what you=ve testified that you
15 observed on the site in terms of --

16 MR. WORKOSKY: They generally do what I saw in the
17 field when I was there.

18 MR. RUHLEN: Okay. We had talked before about the
19 special exception site but did you also observe conditions
20 generally in the shopping center property in terms of
21 parking?

22 MR. WORKOSKY: I did. I was in the field a couple
23 of times at the shopping center specifically back in April
24 on a typical week day which was a Thursday. There during
25 the morning through the afternoon and evening peak hours,

1 drove around, watched observations, general parking, without
2 being specific about parking occupancy, but I didn't
3 perceive a parking issue in the field. I saw, you know,
4 plenty of parking spaces primarily where they're shown on
5 these aerial photos which is sort of in the southeastern
6 part of the main parking field that, you know, is directly
7 in front of the grocery store and to the west of the
8 McDonald's building. There's parking available there. That
9 was the same case on Saturday through the midday hours say
10 between 10:00 and 2:00 or 3:00 p.m.

11 MR. RUHLEN: And the timing of your site visits,
12 were you on site while the supermarket was still occupying
13 the shopping center? Do you recall?

14 MR. WORKOSKY: Yes. It was still up back in
15 April.

16 MR. RUHLEN: Okay. We had some previous testimony
17 about sort of what's happening just off the access point
18 from Bel Pre in connection with those spaces. Could you
19 revisit that testimony again in terms of some of the
20 congestion issues that we've heard about?

21 MR. WORKOSKY: Well, some of the current
22 operations that are along the access road from Bel Pre in
23 between the McDonald's and the Starbucks on the eastern
24 side, there are conflicts created by vehicles backing out
25 and other vehicles waiting to pull into some of the those

1 parking spaces today. That causes some queuing and some
2 congestion in those areas. Also, some traffic that uses the
3 parking spaces on the eastern side within the service
4 station. By reducing the number of parking spaces that are
5 in front of the McDonald=s building on the east side, that
6 will help alleviate some of those conflicts that you have
7 there today.

8 MR. RUHLEN: No further questions.

9 EXAMINER: All right. Mr. Kauffunger, any
10 questions of Mr. Workosky?

11 MR. KAUFFUNGER: No.

12 EXAMINER: All right. Anyone else?

13 MR. RUHLEN: No. That=s all we have.

14 EXAMINER: Okay. Closing statements?

15 MR. RUHLEN: Sure. We submit that through the
16 evidence and testimony that we=ve presented today, we=ve
17 demonstrated that this application meets the standards
18 necessary for approval of the proposed modifications to the
19 existing special exception.

20 To the extent that these concerns have been raised
21 regarding parking sufficiency, we would point out a couple
22 of things, I think, that we=ve heard through our testimony
23 today. We=ve heard that there are some existing concerns
24 with queuing and such and cut through traffic that will be
25 addressed by the site improvements that are being proposed.

1 We have heard that in terms of code requirements, although
2 some parking spaces are being requested to be eliminated in
3 connection with the parking waiver, overall requirements for
4 the proposed use are actually dropping. From a code
5 perspective, I guess we would also point out some of the
6 county=s recent policy trends and where they=re going with
7 parking requirements in general. That sort of drop is
8 perhaps not ultimately inconsistent with where park and
9 planning may go at the time that, you know, the landlord
10 comes in and chooses to potentially redevelop that site. It
11 may be that the zoning ordinance no longer requires as many
12 parking spaces as it does today. There=s a shifting county
13 policy on that.

14 In terms of some of the concerns we have heard
15 about, the applicant can do what it can to control, you
16 know, how users are using the property, and we are willing
17 to take those comments into consideration. But, I think
18 that sort of in sum, this is an existing use. It=s a long
19 standing use. There are a lot of conditions that have sort
20 of arisen around the property over time that we do believe
21 that the application attempts to address or at least to
22 improve on. So, we would hope that to the extent that some
23 of these concerns have been raised that all things
24 considered on balance this allows for some upgrades to be
25 accomplished on the property in a way that they can=t be

1 done under the existing special exception approval. With
2 that, we respectfully request a favorable recommendation.
3 But, if you have any other questions for the applicant or
4 any of the applicant=s representatives, I=d be happy to
5 address that as well.

6 EXAMINER: Okay. Let me hear from -- Mr.
7 Kauffunger, do you want to say anything in closing?

8 MR. KAUFFUNGER: Well, the reason we=re here today
9 is that they=re asking for a waiver. They=re asking for a
10 waiver to use parking spaces on an adjacent shopping center,
11 and the issue that I maintain, yes, the discussion=s about
12 changing parking requirements in different areas of the
13 county. There=s no question about that. But, today as I
14 understand it, we=re still using the same parking
15 requirements and by giving up spaces that are maybe not
16 recognized, we could be curtailing our own ability to find a
17 food store that would wish to relocate into the old Giant
18 location, and that=s why I feel that it=s not in the public
19 interest to grant this waiver.

20 EXAMINER: All right. I would like, before I
21 issue my report, I would like to keep the record open to
22 allow you to submit the existing lease.

23 MR. RUHLEN: Okay.

24 EXAMINER: The existing lease. Not for the
25 dumpster but what you have, and if there=s anything you can

1 clarify as to the location or how the existing parking -- is
2 it geographically located or is it anywhere on this center?

3 MR. RUHLEN: Okay.

4 EXAMINER: How long would you need me to do that?

5 MR. RUHLEN: Could we do 10 days, two weeks? Ten
6 days?

7 EXAMINER: You mean 10 business days, two weeks?

8 MR. RUHLEN: Ten business days.

9 EXAMINER: Yes. That=s fine. Now, I have 30 days
10 with the understanding one of the conditions of approval
11 would be that you submit whatever document showing your
12 right to use and maintain that dumpster area before the
13 Board of Appeals. As you know, I have 30 days from the date
14 the record closes. So, 30 days from, I didn=t bring my
15 calendar in with me so I don=t have what 10 business days
16 would be from today but it=ll be 10 business days from today
17 unless it=s a holiday and then it will be the following day.

18 MR. RUHLEN: Sure.

19 EXAMINER: I have 30 days from that date to write
20 my report and recommendation. Once it=s posted, it=ll be on
21 our website, and we will notify you that it=s been placed on
22 the website. You have 10 days after the date it=s issued to
23 request written oral argument before the Board of Appeals if
24 you do not agree with the report and recommendation. The 10
25 days at this point is only to, is not to submit additional

1 evidence, it=s only to receive the transcript of the case
2 and the lease with, you know, if the lease is really
3 complicated legalese, on the parking with a short
4 description of that.

5 MR. RUHLEN: Okay.

6 EXAMINER: All right? So, with that, I will
7 adjourn this hearing. Thank you very much for coming.

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:

Petition of McDonald=s USA, LLC

Special Exception No. S-786-B

OZAH No. 11-43

By:

Dawn M. Bahnmilller, Transcriber